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1 UNITED STATES DISTRICT COURT
2 SOUTHERN DISTRICT OF NEW YORK

3 ENRIQUE SALINAS, *et al.*,

4 Plaintiffs,

5 v.

13-cv-2992 (AT)

6 STARJEM RESTAURANT CORP., *et al.*,

7 Defendant.

8 -----x
9 New York, N.Y.
10 December 12, 2014
9:00 a.m.

11 Before:

12 HON. ANALISA TORRES

13 District Judge

14
15 APPEARANCES

16 MICHAEL FAILLACE & ASSOCIATES, P.C.

Attorneys for Plaintiffs

17 BY: JOSHUA S. ANDROPHY, ESQ.

SHAWN R. CLARK, ESQ.

18 LITTLER MENDELSON, P.C.

Attorneys for Defendants

19 BY: CRAIG R. BENSON, ESQ.

20 NAVEEN KABIR, ESQ.

21 Also Present: G. Eugene Alvarez
22 Spanish Interpreter

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(Trial resumed)

THE COURT: Good morning.

COUNSEL: Good morning.

MR. BENSON: Your Honor, as a few points of order, last night we prepared a supplemental declaration for Mr. Scotto and are prepared to go forward with him as a witness today if time allows.

In conferring with counsel this morning, he informed me that there are still two additional witnesses that he is contemplating utilizing in this matter, and when will those witnesses go? Will they go in the middle of our defense case, in which case Mr. Scotto, for example, will have testified without having the benefit of hearing what they have to say? I want to know how it is going to work in terms of that and whether or not I will be able to then recall him. It seemed to me at some point their case has to conclude and we are entitled at that point to put our defense in. I am just curious as to how your Honor wants to approach that issue.

THE COURT: The way that it would work if there are plaintiffs' witnesses today and we have to go to one of your witness I will hold their case open and to the extent that they bring in a witness who testifies on a matter that your client has not had an opportunity to testify on, you can recall your client.

MR. BENSON: Okay.

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1 Also, with respect to our rebuttal case, there are a
2 couple of additional, what should be reasonably short witnesses
3 that we intend to call.

4 THE COURT: Exactly what is it that you mean by
5 rebuttal? Because usually it is the plaintiffs' case the
6 defense case and then the plaintiff would get a rebuttal so I'm
7 not sure what you mean by defense rebuttal.

8 MR. BENSON: Well, in this case or as defense
9 witnesses based upon what we heard in the testimony as opposed
10 to what we had heard before. New things that came up that need
11 to be addressed as part of the defense's case, call it what you
12 may. So in those situations, my question is do we need to
13 submit declarations for those individuals prior to their
14 testimony or can we just do direct and then allow plaintiff to
15 cross.

16 THE COURT: As time permits.

17 MR. BENSON: Okay.

18 THE COURT: As time permits. It's really a matter of
19 time.

20 MR. BENSON: Okay.

21 THE COURT: Anything further.

22 MR. BENSON: No, your Honor.

23 MR. CLARK: Nothing for plaintiffs.

24 THE COURT: Call your next witness, please.

25 MR. CLARK: Yes, plaintiffs call Mr. Miguel Cervantes

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1 to the stand.

2 MIGUEL CERVANTES,

3 called as a witness by the plaintiffs

4 having been duly sworn, testified as follows:

5 DIRECT EXAMINATION

6 BY MR. CLARK:

7 Q. Good morning, Mr. Caravantes.

8 A. Good morning.

9 MR. CLARK: Your Honor, may I approach the witness?

10 THE COURT: You may.

11 Q. Mr. Caravantes, do you recognize the document that I just
12 presented you?

13 A. Yes.

14 Q. Do you intend for this declaration to serve as your direct
15 testimony in this matter?

16 A. Yes.

17 Q. Could you please turn to the last page.

18 Mr. Caravantes, is this your signature here on the
19 last page of this declaration?

20 A. Yes.

21 MR. CLARK: At this point plaintiffs would seek to
22 admit this declaration as Plaintiff's Exhibit 113.

23 THE COURT: Any objection.

24 MR. BENSON: No objection, your Honor.

25 THE COURT: It is admitted.

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Caravantes - Direct

1 (Plaintiff's Exhibit Exhibit 113 received in
2 evidence)

3 MR. CLARK: Your Honor he would also seek to admit
4 exhibits number 37 and 38 which are referenced in the
5 declaration.

6 MR. BENSON: No objection, your Honor.

7 THE COURT: They are admitted.

8 (Plaintiffs' Exhibits 37 and 38 received in evidence)
9 Clark lark plaintiffs have no further questions on direct for
10 this witness at this time.

11 THE COURT: Cross-examination.

12 MR. BENSON: Thank you, your Honor.

13 CROSS EXAMINATION

14 BY MR. BENSON:

15 Q. Good morning, Mr. Caravantes.

16 A. Good morning.

17 Q. Mr. Caravantes, you worked at Fresco Restaurant from 1999
18 until 2013, correct?

19 A. Correct.

20 Q. Approximately 14 years.

21 A. Yes.

22 Q. Prior to working at Fresco Restaurant, did you have
23 experience in the restaurant industry?

24 A. Yes.

25 Q. What was that experience?

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Caravantes - Cross

1 A. Busboy.

2 Q. What restaurant?

3 A. The name of it is Remi.

4 Q. How many years did you work at Remi?

5 A. I do not remember.

6 Q. Were you working at Remi at the time that you began working
7 at Fresco Restaurant?

8 A. Again? Say it again?

9 Q. Were you working at Remi at the time that you began work at
10 Fresco Restaurant?

11 A. Yes.

12 Q. Did you continue working for Remi when you first started
13 working at Fresco Restaurant?

14 A. No.

15 Q. Was Remi what they call a tipped house?

16 A. I do not recall.

17 Q. So you were not distributed tips when you worked at Remi?

18 A. Yes, but I do not recall at this moment.

19 Q. You know Anthony Scotto, correct?

20 A. Yes.

21 Q. He runs Fresco Restaurant, does he not?

22 A. Yes.

23 Q. And that has always been the case for all of the years that
24 you worked there, correct?

25 A. Yes.

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Caravantes - Cross

1 Q. Anthony is always at the restaurant, is he not?

2 A. Yes.

3 Q. And he is involved, based upon your observations, in all
4 major decisions involving the restaurant, correct?

5 A. Yes.

6 Q. And that would involve all decisions involving the terms
7 and conditions of employment of the service employees, correct?

8 A. Yes.

9 Q. At Fresco Restaurant you served in the position of busser
10 in the years that you were employed, correct?

11 A. Yes.

12 Q. And there were different assignments within the busser
13 category, correct?

14 A. Yes.

15 Q. Those assignments were stocker, correct?

16 A. Yes.

17 Q. Coffee person, correct?

18 A. Yes.

19 Q. What they call bar-back, correct?

20 A. Yes.

21 Q. Did you serve in all of those positions?

22 A. Yes.

23 Q. Were you assigned the stocker assignment for all of the
24 years that you worked at Fresco Restaurant?

25 A. When I started to work, yes.

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Caravantes - Cross

1 Q. So it was just when you started to work?

2 A. Yes, the first years when I started to work.

3 Q. At some time you were no longer assigned as a stocker?

4 A. During the last years, not anymore.

5 Q. So when was the last time that you worked as a stocker?

6 A. I cannot remember.

7 Q. Approximately?

8 A. I do not remember.

9 Q. So is it true that the more experienced bussers worked
10 little or no shifts as a stocker?

11 A. Well, they assigned us to different positions.

12 Q. But you yourself haven't been assigned as a stocker for
13 years, correct?

14 A. I do not remember.

15 Q. Have you been assigned as a stocker since 2008?

16 A. I do not remember.

17 Q. How about since 2010?

18 A. I do not remember.

19 Q. The stocker helps the bussers by bringing materials that
20 they need to use to the dining room floor, correct?

21 A. Yes.

22 Q. And if the stockers didn't do it, the bussers themselves
23 would have to do it, correct?

24 A. Correct.

25 Q. And bringing clean materials to the service floor for the

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Caravantes - Cross

1 customers to use is an important part of a busser's job, is it
2 not?

3 A. Yes.

4 Q. If somebody other than the busser does that, it makes the
5 busser's job easier, does it not?

6 A. It was always done by the stocker.

7 Q. My question is, does that make the busser's job easier?

8 A. That was the job of the stocker.

9 Q. Did it make -- if you were bussing tables on the service
10 floor, having the clean materials at the stations made your job
11 easier as a busser, correct?

12 A. I had a number of activities to perform as a busboy.

13 Q. One of them was to change the service material and turn
14 over the tables, correct, set the tables with clean utensils
15 and plates? Correct?

16 A. Correct.

17 Q. Having those things close by enabled you to do that faster,
18 did it not?

19 A. Yes.

20 Q. And that was good for the customers, was it not?

21 A. Yes.

22 Q. So the stocker was an important part of the service team,
23 correct?

24 A. Yes.

25 Q. And it was very much a part of providing good customer

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Caravantes - Cross

1 service, correct?

2 A. Yes.

3 Q. And that was true for the entire time that you worked at
4 Fresco Restaurant, correct?

5 A. Yes.

6 Q. All of the bussers -- and when I say that, I include all of
7 the assignments -- all worked together as a team, correct?

8 A. Yes.

9 Q. That includes the stocker, the coffee person, the bar-back,
10 and any of the bussers, correct?

11 A. Yes.

12 Q. You help each other out, correct?

13 A. If we have the time, yes.

14 Q. And you do that because it makes the service better,
15 correct?

16 A. Yes.

17 Q. And that means that everyone on the service team runs food
18 when necessary, correct?

19 A. Sometimes.

20 Q. Well, bussers run food, do they not?

21 A. No.

22 Q. Bussers never run food.

23 A. Two, three times.

24 Q. Okay. So stockers or the stocker assignment runs food more
25 than the regular busser assignment? Is that your testimony?

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Caravantes - Cross

1 A. Can you repeat?

2 Q. Okay. Stockers run food, correct?

3 A. Two, three times.

4 Q. Two, three times a meal?

5 A. Yes.

6 Q. That's all?

7 A. Yes, because one had to bring the whole service out.

8 Q. And if your other plaintiffs testified that it happened
9 more than that, is that contrary to your own experience and
10 observations?

11 A. Well, I did my job and --

12 THE INTERPRETER: Your Honor, sometimes the witness is
13 speaking a little bit to himself, and I have to hear him on top
14 of my own voice. I requested him a number of times by making
15 signs for him to speak louder, and he must understand that I
16 have to hear him and my own voice on top of his sort of just
17 kind of very hushed voice. Please, your Honor.

18 THE COURT: Sir, would you speak up, please?

19 THE WITNESS: Yes, of course.

20 MR. BENSON: I'm not sure is if there is a question
21 pending.

22 THE COURT: I will read it: "And if your other
23 plaintiffs testified that it happened more than that, is that
24 contrary to your own experience and observations?"

25 A. Well, I speak about my own, myself personally, and the jobs

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Caravantes - Cross

1 that I was performing.

2 Q. And you don't remember when the last time that you were a
3 stocker was, correct?

4 A. Exactly. I do not remember.

5 Q. But it is true, is it not, that there are times when a lot
6 of food must be run out of the kitchen all at the same time.

7 A. I do not understand the question. Can you repeat?

8 Q. So, for example, if there is a large party or a big table,
9 and there aren't enough runners because they are busy running
10 out food to the dining room, does anybody else help out during
11 that time?

12 A. That would be one, two, or three times that we would help.
13 There were always sufficient enough runners.

14 THE COURT: So based on your observations, sir, with
15 regard to the stockers, what percent of their time did they
16 dedicate to running food from the kitchen to the tables?

17 THE WITNESS: The runners would perform by taking
18 their food. I would suppose that the runner would do it all
19 the time.

20 THE COURT: What about the stockers? How much time
21 did the stockers devote? What percentage of their time?

22 THE WITNESS: 3, 4 percent.

23 Q. You never replaced the position of a dishwasher at any time
24 that you were assigned to be a stocker, correct?

25 A. I cannot remember.

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Caravantes - Cross

1 Q. Meaning that you have no recollection of ever replacing the
2 dishwasher for any portion of any shift that you worked as a
3 stocker, correct?

4 A. I cannot remember.

5 Q. I'm not sure that you understood my question. I am just
6 trying to understand your testimony.

7 It is your testimony that, as you sit here today, you
8 have no recollection of ever doing that, is that correct?

9 A. Correct; I do not remember.

10 Q. Isn't it true, as you sit here today, that you never
11 observed any other stockers taking the place of a dishwasher
12 for any portion of any shift which you worked at Fresco
13 Restaurant, correct?

14 A. I would do my own job, and I wasn't overseeing or watching
15 the other fellow workers.

16 Q. So the answer to my question is yes, correct?

17 MR. CLARK: Objection. I don't see how he can get
18 that from the testimony that the witness has given.

19 THE COURT: Sustained.

20 Q. You normally arrive at 10 a.m. for a lunch shift, correct?

21 A. Correct.

22 Q. And then you perform side work, correct?

23 A. Yes, correct.

24 Q. And you do that between 20 and 30 minutes, correct?

25 A. Correct.

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Caravantes - Cross

1 Q. And then you have a family meal, correct?

2 A. Correct.

3 Q. And then after the family meal, you set up the Rose Room
4 and prepare the dining room for the arrival of the customers at
5 11:30, correct?

6 A. The restaurant would open at 11:30, but the people would
7 arrive 11 -- 12:30, 12:30, 12:30.

8 Q. No customers arrived at 11:30, is that your testimony?

9 A. Yes.

10 Q. Even though the restaurant was open from 11:30 to 12:30, it
11 is your testimony that no customers would arrive during that
12 time?

13 A. Varies. It was on a rare occasion.

14 Q. You also spent some time working as a runner, correct?

15 A. Yes.

16 Q. Approximately how much time did you work as a runner?

17 A. Towards the end -- what do you mean by "time"?

18 Q. That's a fair question.

19 At what time during your employment at Fresco did you
20 start working as a runner?

21 A. The runner would come in and start at 10 also.

22 Q. I apologize then I am not being clear. I am trying to
23 understand at what time during your employment --

24 THE COURT: Do you mean what year?

25 MR. BENSON: What year.

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Caravantes - Cross

1 A. Well, perhaps during the last two years that I worked
2 there.

3 Q. Okay. Now, in the kitchen, a chef or one of the chefs
4 stands in front of a microphone, correct?

5 A. Sometimes.

6 Q. And the person in front of the microphone is in charge of
7 getting the orders and communicating to the cooks, correct?

8 THE INTERPRETER: "Post" you said, right.

9 MR. BENSON: "Communicating to the cooks."

10 A. Yes.

11 Q. And that person sometimes has a person next to them,
12 correct?

13 A. I do not understand what you mean by "next to that person."

14 Q. Okay. One person stays in front of the microphone and
15 communicates with the cooks, correct?

16 A. Yes.

17 Q. Another person may be next to that person to deal with the
18 plates after they are cooked and ready to go out to the dining
19 room, is that correct?

20 A. Yes.

21 Q. And that person communicates with the runners and whoever
22 else is running the food to the dining room to ensure that the
23 food goes to the right place, is that correct?

24 A. Yes.

25 Q. Sometimes there are two chefs -- one in front of the

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Caravantes - Cross

1 microphone and the other communicating with the runners --
2 correct?

3 A. Yes.

4 Q. Other times, if the chefs go to the bathroom or are
5 otherwise occupied, a runner may fill in for the position that
6 communicates with the individuals who are running the food,
7 correct?

8 A. Yes, that is so.

9 Q. And in those situations, the runner who was assisting also
10 runs the food, correct?

11 A. When the chef or sous chef were not there, then the runners
12 would take the food. But when there was a runner by the side,
13 he would send them, he would send the runners.

14 Q. And if a runner was doing that job, the runner would join
15 the other runners in delivering the food, correct?

16 A. Yes, at some occasion.

17 Q. And you, yourself, on a few occasions served in that
18 position, correct?

19 A. Yes, on some occasions.

20 Q. And when you served in that position, you ran food out to
21 the dining room, correct?

22 A. Yes, because I was the only person in the kitchen.

23 Q. And the food needed to be run out to the tables, correct?

24 A. Correct.

25 Q. It has always been true, has it not, that the end times of

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Caravantes - Cross

1 any shift vary from day to day, correct?

2 A. Yes.

3 Q. And it is also different depending upon when a particular
4 section clears out, correct?

5 A. Clearly so, yes.

6 Q. So that if your section clears out earlier, you are able to
7 leave earlier than someone else's section who happens to be
8 busy, correct?

9 A. If I was closing, I would have to stay until the dining
10 room was empty.

11 Q. But that is true only if you were closing, correct?

12 A. Clearly so.

13 Q. And if you weren't closing, you could leave as soon as your
14 section was clear, correct?

15 A. One had to ask the manager.

16 Q. But you could leave, and often did leave, once your section
17 was clear, correct?

18 A. The manager, the manager would decide at what time we could
19 leave.

20 THE COURT: By "manager," what do you mean?

21 THE WITNESS: The person that at that time was in
22 charge of us.

23 THE COURT: So who were the managers?

24 THE WITNESS: During the morning it was Brent, and
25 during the afternoon/evening, Attilo.

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Caravantes - Cross

1 Q. Are you talking about floor captains who would have to
2 release you, sir?

3 A. No, the managers.

4 Q. Well, there were times when Marco was serving in that role,
5 correct?

6 THE COURT: What role are you referring to?

7 MR. BENSON: The role that he is referring to, what he
8 calls the manager role.

9 A. Marco was one, he was a waiter, only I only knew Brent and
10 Attilo as a person who would tell us that we could leave.

11 Q. But if they weren't there on a shift?

12 A. Usually they were always there. They would always be
13 there.

14 Q. What if they weren't?

15 A. I always -- I always saw them.

16 Q. Is it your testimony they were there on every shift?

17 A. Yes.

18 Q. You never remember a shift where either one of them wasn't
19 present?

20 A. No, no, I cannot remember.

21 Q. There weren't other individuals who wore suits during a
22 service and acted as floor captains?

23 A. The captains were there, and those were -- I do not
24 remember, but the managers, they were the managers.

25 THE COURT: So who were the floor captains?

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Caravantes - Cross

1 A. I do not remember.

2 BY MR. BENSON:

3 Q. Isn't it true, sir, that Brent Drill was a floor captain?

4 A. Well, he -- during the morning it was he who decided what
5 we were to do, and we had to tell him what we were going to do
6 and we would take a break.

7 Q. Sir, you worked in restaurants for a long time, correct?

8 A. Yes.

9 Q. And you know what a captain does in the service, correct?

10 A. Yes.

11 Q. And the captain is in charge of the service, correct?

12 A. Yes.

13 Q. And the captain tells the waiters and the bussers and the
14 runners what to do during a shift, correct?

15 A. Yes.

16 Q. That is their job.

17 A. Yes.

18 Q. But you would agree with me that, on any shift, different
19 bussers leave at different times?

20 A. Yes.

21 Q. And that has been true for the entire time that you worked
22 at Fresco Restaurant, correct?

23 A. Yes.

24 Q. When you were on call, it is your responsibility to call
25 the restaurant at a specific time before the shift begins in

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Caravantes - Cross

1 order to determine whether you will be needed, correct?

2 A. Yes.

3 Q. At the time that you were employed at Fresco Restaurant,
4 did Brent Drill work as a floor captain?

5 A. Well, Brent would always give orders to us.

6 Q. That's nonresponsive to my question, sir.

7 My question to you is: Did Brent Drill work as a
8 floor captain?

9 A. Brent was a manager to the best of my knowledge.

10 Q. Sir, did you take a deposition in this case?

11 A. Yes.

12 Q. Were you asked questions and did you give answers?

13 A. Yes.

14 Q. Were you sworn to tell the truth?

15 A. Yes.

16 Q. And did you tell the truth?

17 A. Yes.

18 Q. I am going to give you a copy of that deposition.

19 MR. BENSON: Do you want a copy?

20 THE COURT: I have.

21 MR. BENSON: You have.

22 Q. I direct your attention to page 168 of your deposition,
23 specifically line 19. Were you asked the following -- were you
24 asked this question and did you give this answer:

25 "Q Did Brent Drill work as a floor captain?

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Caravantes - Cross

1 "A Yes."

2 Were you asked that question and did you give that
3 answer?

4 A. Yes.

5 Q. Now, you worked at Fresco Restaurant for 14 years. Did you
6 ever observe Brent Drill hire a single individual?

7 A. Yes.

8 Q. I direct your attention to page 120 of your deposition.
9 No, I'm sorry. One moment, please. Can't read my own
10 handwriting.

11 Page 170, specifically line 4, were you asked the
12 following question and did you give the following answer:

13 "Q Did Brent hire anybody?

14 "A I don't know."

15 Were you asked that question and did you give that
16 answer?

17 A. Yes.

18 Q. Did you observe Brent fire anybody?

19 A. I do not remember.

20 Q. And did you observe Brent discipline anybody?

21 A. I do not remember.

22 Q. Do you know who Attilo Vosilla is?

23 A. Yes.

24 Q. Did you observe Mr. Vosilla during the many years as you
25 were an employee of Fresco?

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Caravantes - Cross

1 A. Yes.

2 Q. Did you ever observe Mr. Vosilla hire anyone?

3 A. I do not remember.

4 Q. Did you observe Mr. Vosilla fire anyone?

5 A. I don't remember.

6 Q. Did you observe Mr. Vosilla ever discipline anybody?

7 A. I do not remember.

8 Q. Is it your testimony that you never received shirts for
9 free from Fresco Restaurant?

10 A. That is true; I never received them.

11 Q. Is it your testimony that you had to pay for those shirts?

12 A. Yes, we had to pay.

13 Q. Who gave you the shirts?

14 A. I do not remember. I believe it was the manager.

15 THE COURT: What manager?

16 THE WITNESS: I think Brent.

17 Q. Do you remember that it was Brent or are you speculating?

18 A. I do not remember.

19 Q. So you have no recollection of Brent giving you shirts,
20 correct?

21 A. I do not remember.

22 Q. Who did you pay for the shirts?

23 A. To the secretary.

24 Q. Who is that?

25 A. Natasha.

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Caravantes - Cross

1 Q. How much did you pay for the shirts?

2 A. \$50.

3 Q. And how did you pay that \$50?

4 A. Cash.

5 Q. Did you ever ask for a receipt?

6 A. No.

7 Q. I direct your attention to page 178 of your testimony,
8 specifically line 5. Were you asked the following questions
9 and did you give the following answers:

10 "Q Okay. Who did you have to buy the uniform from?

11 "A From Fresco, the company.

12 "Q And how did you pay for it?

13 "A In cash.

14 "Q Okay. Who did you pay?

15 "A The person that would give it to us at the moment.

16 "Q And who was that?

17 "A I don't remember at this moment."

18 Were you asked those questions and did you give those
19 answers?

20 A. Yes.

21 MR. BENSON: I have no further questions, your Honor.

22 THE COURT: Redirect?

23 MR. CLARK: Could I have a moment to confer with
24 counsel?

25 (Counsel confer)

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Caravantes - Cross

1 MR. CLARK: We have no redirect for this witness at
2 this time.

3 THE COURT: Thank you, sir. You may step down.

4 (Witness excused)

5 THE COURT: Would you call your next witness, please.

6 MR. ANDROPHY: Plaintiffs call José Julian Amazquita.

7 JOSE JULIAN AMAZQUITA AGUDELO,

8 called as a witness by the plaintiffs

9 having been duly sworn, testified as follows:

10 THE COURT: You may inquire.

11 MR. ANDROPHY: May I hand the witness his declaration?

12 THE COURT: Yes.

13 DIRECT EXAMINATION

14 BY MR. ANDROPHY:

15 Q. Good morning, Mr. Amazquita.

16 A. Good morning.

17 Q. Is the document I just handed you the declaration that you
18 submit as your direct testimony in this action?

19 A. That is so.

20 (Continued on next page)

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22

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Amazquita - direct

1 BY MR. ANDROPHY:

2 Q. And, if you can turn to the last page?

3 A. Yes.

4 Q. Is that your signature on the last page?

5 A. Yes.

6 MR. ANDROPHY: At this time we ask that
7 Mr. Amazquita's declaration be admitted as Plaintiff's Exhibit
8 114.

9 THE COURT: Any objection?

10 MR. BENSON: No objection, your Honor.

11 THE COURT: It is admitted.

12 (Plaintiff's Exhibit 114 received in evidence)

13 MR. ANDROPHY: And we also ask that Plaintiff's
14 Exhibits 31, 32, 33, 34, 35 and 36 and 87 be admitted. These
15 are documents identified in the witness' declaration.

16 MR. BENSON: No objection.

17 THE COURT: They are admitted.

18 (Plaintiff's Exhibits 31, 32, 33, 34, 35, 36 and 87
19 received in evidence)

20 MR. ANDROPHY: Thank you. We have no further direct
21 examination at this time.

22 THE COURT: Cross-examination.

23 MR. BENSON: Thank you, your Honor.

24 CROSS EXAMINATION

25 BY MR. BENSON:

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Amazquita - cross

1 Q. Good morning, Mr. Amazquita.

2 A. Good morning.

3 Q. Mr. Amazquita, you were hired in January of 2012, correct?

4 A. Yes.

5 Q. And at the time of your hiring did you have any restaurant
6 experience?

7 A. Yes.

8 Q. Where had you worked previously?

9 A. I had worked my previous job before Fresco, it was at
10 Tony's Roma Restaurant, and before that one, well, the Tony
11 Roma's at Queens, and that one at Docks.

12 Q. And was that previous experience as a busser?

13 A. Busser, runner, and as a host.

14 Q. And, you interviewed with Anthony Scotto, correct?

15 A. Yes.

16 Q. And Mr. Scotto was the individual who hired you, correct?

17 A. Yes.

18 INTERPRETER: Your Honor, could the witness please be
19 instructed to wait until I have finished my simultaneous
20 interpretation before he provides an answer, please?

21 THE COURT: So, sir, just wait for him to finish
22 speaking.

23 THE WITNESS: Excuse me.

24 BY MR. BENSON:

25 Q. When you were assigned as a busser --

ECC5sal2

Amazquita - cross

1 A. Yes.

2 Q. -- were you ever assigned to the stocker assignment?

3 A. When I worked, yes.

4 Q. And were you also ever assigned as the coffee person?

5 A. Yes.

6 Q. And were you ever assigned as the barback?

7 A. Yes.

8 Q. When you worked as a stocker, was there ever any shift
9 where you took the place of a dishwasher for any portion of
10 that shift?

11 A. Yes. Several times.

12 Q. And when did that happen?

13 A. When I was a stocker, between 2:00 and 3:00 in the
14 afternoon, the dishwasher would go over to be the preparer or
15 to prepare things or do some other things so then I had to
16 clean my station and also do wash glasses, plates, silverware.

17 Q. What time of year did this happen?

18 A. During the two years that I worked at Fresco bar. A year
19 and a half. Some, around there.

20 Q. Was that the case through the entire time that you worked
21 at Fresco Restaurant?

22 A. Most of the shifts when I was working as a stocker.

23 Q. And so that was throughout the year whether it was busy or
24 not?

25 A. Yes.

ECC5sal2

Amazquita - cross

1 Q. And is that something that you did on your own or you were
2 directed to do it?

3 A. What happens is it happens that what happened, there was a
4 lot of, lost time -- there was a lot of lost time, there was --
5 things were not kept in a proper order so -- okay. So, things
6 were not kept in the proper order, plates and the dishwasher
7 wasn't there so I have to finish my own job and so I had to do
8 it.

9 Q. Again, sir, maybe you didn't understand my question.

10 My question to you is, is that something that you did
11 on your own or were you directed to do it?

12 A. Sometimes both things. By my own, on my own account, or
13 because sometimes the manager would tell me to do so.

14 Q. So sometimes you just started washing dishes on your own
15 without being told to do so?

16 A. On the two times, both times.

17 Q. Is it your testimony that you did this just twice? I'm
18 confused.

19 A. No. He is asking me whether I did that on my own, okay,
20 and I'm telling him that it was because of my own, I did that
21 on my own and also because the manager would tell me that
22 sometimes.

23 Q. So, you say that this is both shifts that you were a
24 stocker. Is that a fair characterization of your testimony?

25 INTERPRETER: You said both?

ECC5sal2

Amazquita - cross

1 MR. BENSON: I said most.

2 A. Yes, on most of the shifts.

3 Q. And on the shifts that you say that you replaced the
4 dishwasher, what percentage of those shifts did you do that on
5 your own as opposed to being told to do it?

6 A. I do not understand what you mean by percentage.

7 Q. Okay. I'm trying to get a sense of how often you get it on
8 your own as opposed to being told to do it. Do you understand
9 that?

10 A. Well, what happens is that when I was working as a stocker
11 I would work from -- from 12:00 to 4:00 in the afternoon and if
12 by 2:30 my station was dirty and the dishes, glasses are dirty,
13 I have to take some time as a stocker, from the stocker to
14 perform as a dishwasher during that time.

15 Q. I understand that, sir. And you have testified that you
16 did that on most shifts that you were a stocker, correct?

17 A. Yes.

18 Q. And you have also testified that some of the time you did
19 that on your own and on other occasions you were told to do it;
20 is that correct?

21 A. Yes, because -- but you have already asked me that 20
22 times.

23 Q. I am trying to understand how often you were told to do it
24 as opposed to how often you did it on your own.

25 A. The same. It was the same.

ECC5sal2

Amazquita - cross

1 Q. So, half the time you did it on your own and half the time
2 you were told to do it? Is that your testimony?

3 A. Yes.

4 Q. And how long would you spend washing dishes on these
5 occasions?

6 A. I just said it. I said during the shift as a stocker
7 between 12:00 to 4:00 from 12:00 to 2:30 I was the stocker but
8 then afterwards, as I had to finish doing my things that I had
9 to clean, I had to wash my dishes and wash whatever I had to
10 wash. I said that already.

11 Q. How many minutes did you spend washing dishes?

12 THE COURT: So, counsel, he has already answered this
13 question and I will testify on his behalf if you would like.
14 12:00 to 2:30 he is at his stations, 2:30 to 4:00 he washed the
15 dishes. Now, do you want him to convert that into minutes?

16 MR. BENSON: No. If that is his testimony I am fine
17 with that, your Honor. I respectfully did not understand that
18 to be his testimony.

19 THE WITNESS: I said that already.

20 MR. BENSON: Okay.

21 INTERPRETER: Your Honor, I in turn, have some times,
22 if I may be heard, I, in turn, have sometimes much difficulty
23 also being here. Something is happening to the system which
24 projects, because I went yesterday and asked the interpreter's
25 office, and they told me that sometimes the signal, which

ECC5sal2

Amazquita - cross

1 apparently is coming, might not be very clear. So I, myself,
2 sometimes lose the signal, too, as the lady court reporter is
3 saying. I also sometimes lose the signal.

4 Thank you, your Honor.

5 I try to place myself where everybody will be as well
6 as possible. I am trying my best, your Honor.

7 THE COURT: I know.

8 INTERPRETER: Thank you, your Honor.

9 BY MR. BENSON:

10 Q. Did you ever wash dishes with another stocker at the same
11 time?

12 A. No.

13 Q. So, when you are at paragraph 15 of your declaration where
14 it says, and I quote in the third sentence, sometimes another
15 stocker would also have to wash dishes with me, that was not
16 correct?

17 A. Can you repeat the question, please?

18 Q. At paragraph 15, specifically the third sentence it reads,
19 and I quote, sometimes another stocker would also have to wash
20 dishes with me. Unquote.

21 That's not accurate, is it?

22 A. Well, I do not remember that I wrote that. I cannot
23 remember that I said that because never, never, did I have help
24 from a stocker.

25 Q. When it says: This would often happen during times when

ECC5sal2

Amazquita - cross

1 Fresco was less busy such as in the summer months; that wasn't
2 really accurate either, correct?

3 A. Yeah, I wrote here. It says there and he is reading in
4 English, this was often during the summertime. Yeah.

5 Q. So, is it your testimony that this happened during the
6 summertime?

7 A. No. During the whole time, no, sir, just during the
8 summer.

9 THE COURT: What is it that you are saying happened
10 during the whole time?

11 THE WITNESS: About washing, to be working as a
12 stocker and as a dishwasher.

13 BY MR. BENSON:

14 Q. Paragraphs 17 says that you have other employees that were
15 assigned as stocker and that they had the same duties as you
16 when you were a stocker. Is that correct?

17 A. Yes.

18 Q. So, based on your observations, is it your testimony that
19 the other individuals who you list here also would be washing
20 dishes from 2:30 to 4:00?

21 A. No. I saw them doing what I was doing but not necessarily
22 all of them had to be there between 2:30 to 4:00.

23 Q. Is it safe to say that you observed all of them spending
24 some portion of their shift as a stocker washing dishes?

25 A. Yes. Yes.

ECC5sal2

Amazquita - cross

1 Q. Is that also true for Angel Cedeno?

2 A. Yes.

3 Q. Yes.

4 A. Yes.

5 Q. And would that also be true for Vicente Leon?

6 A. All the names that appear here and that I said so, it is
7 because I saw them.

8 Q. Okay.

9 So, when you say you saw them, you saw them spending
10 some portion of their shift as a stocker washing dishes,
11 correct?

12 A. Yes, but not necessarily simultaneously at the same time
13 that I was doing it.

14 Q. I understand. That would be quite a feat.

15 A. Exactly.

16 Q. Now, there are paintings at Fresco, correct? Oil
17 paintings?

18 A. Yes. Yes. Oils. Pictures.

19 Q. They're very, very large paintings, correct?

20 A. Yes.

21 Q. You never spent any time cleaning those paintings, did you?

22 A. Several times. Several times.

23 Q. Is it your testimony that you personally cleaned the oil
24 paintings?

25 A. Yes. Sometimes.

ECC5sal2

Amazquita - cross

1 Q. And how would you do that?

2 A. When we were starting before any shift.

3 Q. I'm asking you specifically what materials you used to
4 clean those oil paintings.

5 A. Rags.

6 Q. And would you put anything on those rags?

7 A. It would depend whether it was -- it was a glass we would
8 use Windex or water.

9 Q. Okay. I'm asking you about the big oil paintings in the
10 restaurant's main floor. Do you understand what I am asking
11 you?

12 THE COURT: Counsel --

13 MR. BENSON: Yes.

14 THE WITNESS: Oh, what you are talking is about those
15 paintings. Oh.

16 THE COURT: Do you want to use the photograph,
17 counsel, so that the witness will understand the question?

18 THE WITNESS: Because me, I would clean as well as the
19 other busboys, we would clean the photographs, those pictures,
20 also the mirrors -- in English. No, no. The other ones, not.

21 MR. BENSON: Okay. Thank you.

22 THE COURT: Counsel, if it is a question of importance
23 to you, since I am the finder of fact, at this point I don't
24 know that you have distinguished between the various things
25 that were hanging on the wall. And so, if you want, in your

ECC5sal2

Amazquita - cross

1 post-trial filings to distinguish, then you need to ask this
2 witness a more specific question.

3 MR. BENSON: I appreciate that, your Honor. Thank
4 you.

5 So the record is clear, I will show you something that
6 I will mark as Defendant's Exhibit J.

7 INTERPRETER: Counsel, could I be provided with one
8 also? The techniques for an interpreter, we look at who is
9 speaking and we want to be in situ. We prefer to be where
10 things happen.

11 THE COURT: Are you going to seek to admit this as an
12 exhibit?

13 MR. BENSON: Yes.

14 BY MR. BENSON:

15 Q. Do you recognize that as a picture of the restaurant, of
16 the dining room floor of the restaurant?

17 A. Yes.

18 MR. BENSON: Move it into evidence, your Honor.

19 THE COURT: Any objection?

20 MR. ANDROPHY: No objection.

21 THE COURT: This is admitted.

22 (Defendant's Exhibit J received in evidence)

23 BY MR. BENSON:

24 Q. Now, you see that there are paintings on the wall in this
25 picture, correct, specifically?

ECC5sal2

Amazquita - cross

1 A. Yes. Me, already, I have already said just the pictures
2 and the photographs and the mirrors and the windows, the
3 glasses.

4 Q. Okay, but not the paintings, correct?

5 THE COURT: You are referring to the oil paintings?

6 MR. BENSON: The oil paintings.

7 A. Yes. I said so.

8 Q. You said that you were assigned to be a coffee person on
9 certain shifts, correct?

10 A. Yes.

11 Q. And on those shifts you would pour and deliver beverages to
12 the customers, correct?

13 A. Yes.

14 Q. And that would be on lunch shifts, correct?

15 A. Lunch or dinner.

16 Q. Prior to January 1st of 2013, did you ever observe Brent
17 Drill fire an employee?

18 A. Yes.

19 Q. Who?

20 A. I do not remember.

21 Q. When?

22 A. Several times.

23 Q. When, specifically, if you can recall?

24 A. No, no. I cannot remember what day and at what time.

25 Q. And you can't remember the names of those individuals?

ECC5sal2

Amazquita - cross

1 A. No.

2 Q. Not even one?

3 A. No. At this moment, no.

4 Q. Prior to January 1, 2013, did you ever see Brent Drill
5 discipline anyone?

6 A. Yes.

7 Q. Who?

8 A. He was the manager.

9 Q. It is not responsive to my question, sir. I asked you who
10 did you see Mr. Drill discipline?

11 A. I'm going to continue speaking. Several times, because he
12 was the manager.

13 MR. BENSON: Move to strike as non-responsive, your
14 Honor.

15 THE COURT: Sustained.

16 Who did you see him discipline?

17 THE WITNESS: I already told him the several persons
18 but I do not remember who they were.

19 BY MR. BENSON:

20 Q. What positions were they?

21 A. Busboys, dishwashers, waiters.

22 Q. So, it is your testimony that you saw him discipline
23 several busboys, dishwashers and waiters. There weren't more
24 than 20 people in that entire category, correct?

25 A. Category? Category of what?

ECC5sal2

Amazquita - cross

1 Q. Of waiters, bussers and dishwashers that you mentioned?

2 A. I do not understand your question.

3 Q. There weren't many employees who worked as bussers at
4 Fresco, correct?

5 A. There were several busboys, several waiters.

6 Q. How many?

7 A. I cannot remember. We were several of us.

8 Q. You knew everyone's name, did you not?

9 A. Yes.

10 Q. And now I'm asking you, who did Brent Drill discipline
11 prior to January 1st of 2013?

12 A. What happens is that every day there are different busboys
13 and different waiters, and during the whole year he would
14 discipline someone. The only persons that I can remember, it
15 was Washington and Wallington. Yes.

16 Q. And what do you say that Mr. Drill did to Washington?

17 A. He disciplined, he -- well, he -- yeah. He disciplined him
18 because he did something that he did not want him to do.

19 Q. When did that take place?

20 A. I do not remember.

21 Q. Are you sure it was before January of 2013?

22 A. Before and after.

23 Q. I am specifically asking you now about Washington.

24 A. Yes.

25 Q. It was both before and after January 1st of 2013?

ECC5sal2

Amazquita - cross

1 A. Yes.

2 Q. So he disciplined Washington on more than one occasion?

3 A. Yes.

4 Q. Tell me the first occasion that you remember him doing
5 that.

6 A. This is what happened, that many times it happened, and I
7 do not specifically remember the day and the time and exactly
8 how it happened.

9 Q. Is it your testimony that you don't recall the first time
10 it happened prior to January 1st of 2013?

11 A. I'm telling you, I do not know exactly when it happened, at
12 what time and what day. Simply, they just happened.

13 Q. What happened, sir?

14 A. He disciplined them.

15 Q. How?

16 A. Talking in English. Talking in Spanish.

17 I mean, no, just by saying it to them.

18 Q. What did he say?

19 A. That's what I am telling him. He -- he told me I saw
20 several times because he did not want to do something and Brent
21 disciplined him, then but I do not remember exactly which words
22 and what time, what day and at what moment. I cannot remember
23 exactly that.

24 Q. Do you remember what the subject was?

25 A. There were different subjects the times that it happened.

ECC5sal2

Amazquita - cross

1 Q. Do you remember any of them?

2 A. No.

3 Q. How about Wellington? Do you remember any incidents of
4 discipline prior to January 1st, 2013 where Brent Drill
5 allegedly -- I apologize. Please let me finish the question.

6 Do you remember any incidents prior to January 1st of
7 2013 where Brent Drill disciplined Wellington?

8 A. The same thing.

9 Q. Meaning that you have no recollection of any of the details
10 or times or places of anything in connection with these alleged
11 incidents? Is that correct?

12 A. Once again, I repeat: There were many times and I cannot
13 tell you exactly each time what it was that happened and I do
14 not remember what exactly the hour or what day it happened.
15 Just, simply, it did happen.

16 Q. Can you give me the details of any incident of alleged
17 discipline on the part of Mr. Drill toward any employee at
18 Fresco Restaurant?

19 A. With me, myself.

20 Q. That was after January of 2013, correct?

21 A. I do not remember.

22 Q. Well you remember, sir, the incident --

23 A. No, no. I do not remember.

24 Q. Let me finish my question, please.

25 You are speaking about the incident in connection with

ECC5sal2

Amazquita - cross

1 your termination, correct?

2 A. No. No.

3 Q. So, there were other incidents prior to your termination?

4 A. Yes.

5 Q. When did the first one take place?

6 A. Well, because he -- he just lost it and he raised his voice
7 on me and he wanted just for me to go back home; leave and go
8 back home.

9 Q. When did that take place?

10 A. I do not remember.

11 Q. Do you recall any incidents where Attilio Vosilla
12 disciplined anyone?

13 A. Yes.

14 Q. When did that take place?

15 A. I do not remember the day.

16 Q. What incident are you referring to?

17 A. They are two specifically that I know, and I must repeat
18 regarding the same names, Washington and Wellington.

19 Q. And are those the same incidents that you were referring to
20 in connection with your allegation that Mr. Drill was involved?

21 A. No.

22 Q. There were different incidents?

23 A. They were totally different. Different.

24 Q. Let's talk about Wellington. What was the first incident
25 with Wellington?

ECC5sal2

Amazquita - cross

1 A. He arrived late and he disciplined him and he wanted to
2 send him back home and he didn't want to.

3 Q. Did he send him back home?

4 A. Yes.

5 Q. When did that take place?

6 A. I do not remember.

7 Q. Do you know the year?

8 A. I do not remember.

9 Q. Were you present for that incident?

10 A. Yes.

11 Q. Did you hear Mr. Vosilla say anything?

12 A. For him to leave.

13 Q. When, during the shift, did this take place?

14 A. Okay. During the morning the manager is Brent in the
15 evening --

16 MR. BENSON: Objection. Move to strike, your Honor.

17 THE COURT: Sustained. I will strike it.

18 BY MR. BENSON:

19 Q. Would you like the question read back?

20 A. Yes. I was trying to say --

21 MR. BENSON: I'm sorry. Could the court reporter
22 please read back the question?

23 (Record read)

24 A. In the evening.

25 Q. What part of the evening?

ECC5sal2

Amazquita - cross

1 A. I don't know.

2 Q. Was it in the beginning of the shift or the end of the
3 shift?

4 A. I don't know. I do not remember. I do not remember.

5 Q. You don't know whether this is 2012 or 2013?

6 A. I do not remember.

7 Q. Is that the only incident with Wellington that you remember
8 involving Mr. Vosilla?

9 A. I believe there were two more, but I do not remember
10 specifically.

11 Q. How about Washington? Is it your testimony that
12 Mr. Vosilla allegedly disciplined Washington?

13 A. Yes. Several times.

14 Q. And do you recall whether that was 2012 or 2013?

15 A. No. I do not remember.

16 Q. Do you remember the specifics of any of those incidents
17 involving Washington?

18 A. Well, what I remember now, two or three things. The first
19 one he -- he started fighting with someone inside the kitchen.

20 Q. Who? Washington?

21 A. Yes.

22 Q. Were you there?

23 THE COURT: A physical fight?

24 THE WITNESS: Yes. Yeah. Yes.

25 BY MR. BENSON:

ECC5sal2

Amazquita - cross

1 Q. What is the other incident?

2 A. He sent him to clean the glasses, the windows, the outside
3 windows; those were at the entrance of the restaurant and he
4 said that that was not his job to do. So, then he said for him
5 to go back home.

6 Q. And what year was that?

7 A. I do not remember.

8 Q. Morning shift or afternoon shift?

9 A. Afternoon. Afternoon. Afternoon.

10 Q. Early part of the shift or later part of the shift?

11 A. At the beginning of the evening shift.

12 MR. BENSON: I have no further questions.

13 THE COURT: Were there managers at the restaurant?

14 THE WITNESS: Yes.

15 THE COURT: And who were they?

16 THE WITNESS: As far as I know, when I was Brent was
17 the general manager and Attilio was the manager in the
18 evenings.

19 THE COURT: Were there floor captains at the
20 restaurant?

21 THE WITNESS: I only know about one who was the one
22 who came here, only one. I only met one and he would perform
23 as a waiter and his name was Peter. Peter.

24 THE COURT: So, did he have responsibilities in
25 addition to being a waiter?

ECC5sal2

Amazquita - cross

1 THE WITNESS: Yes.

2 THE COURT: Like what?

3 THE WITNESS: When he was a captain he -- he was in
4 charge of the parties on the second floor and if, for any
5 reason, the manager was not there then he would be there. What
6 I do know is that he didn't have a right to fire anybody or to
7 discipline.

8 THE COURT: Redirect?

9 REDIRECT EXAMINATION

10 BY MR. ANDROPHY:

11 Q. Mr. Amazquita, do you still have in front of you the photo
12 that was marked Defendant's Exhibit J?

13 A. Yes. Yes. Yes.

14 Q. And you testified you did not clean the large paintings
15 that are on the walls, correct?

16 A. No. No, no. No. That's logical. On the walls, no.

17 Q. Were there any other paintings at the restaurant?

18 THE COURT: Are you asking about oil paintings? I'm
19 asking you Mr. Androphy.

20 MR. ANDROPHY: If the witness knows, yes, I'm asking
21 about oil paintings.

22 THE WITNESS: No. In other words what I did clean was
23 the pictures of the photographs. Photographs. I -- the
24 mirrors, the windows, the glasses. The only thing about the
25 oil ones is to clean the dust. (Continued on next page)

Ecc2sal3

Amazquita Agudelo - Redirect

1 Q. Do you see in this photograph there are two columns?

2 A. Yes.

3 Q. Do you know what is hanging on those columns?

4 A. They are pictures.

5 Q. I understand it might be difficult to tell from this
6 photograph. Do you recall whether those pictures are
7 photographs or paintings or something else?

8 A. Paintings.

9 Q. Would you sometimes have to clean those?

10 A. Yes.

11 MR. ANDROPHY: I have no further questions.

12 THE COURT: One moment, please.

13 THE WITNESS: Could I say something?

14 THE COURT: You are saying with respect to the last
15 question?

16 THE WITNESS: No, but it is with regards to . . .

17 THE COURT: No.

18 MR. BENSON: Nothing further, your Honor.

19 THE COURT: One moment, please.

20 He wants to make some commentary unrelated to the last
21 question, and I said no.

22 I am waiting for a Sharpie because I am going to ask
23 the witness to circle everything on the walls that he cleaned.

24 (Pause)

25 THE WITNESS: But here, the whole restaurant is not

Ecc2sal3

Amazquita Agudelo - Redirect

1 here.

2 THE COURT: So this is only a part of the restaurant?

3 THE WITNESS: The photographs are not here, the second
4 floor is not here.

5 THE COURT: So what part of the restaurant is this?

6 THE WITNESS: This is the main, central part, the
7 floor, the main central floor.

8 THE COURT: So circle just what you cleaned in that
9 section.

10 THE WITNESS: Like here in the back part there is
11 also, and here, and here towards the background, look here, and
12 the bar on this side.

13 THE COURT: May I see that, please?

14 I am now pointing to the right of the photograph to
15 what looks like a painting that has glass over it and I am
16 asking whether you also cleaned that.

17 THE WITNESS: Yes.

18 THE COURT: What about the painting that is on the far
19 right of the picture, against the wall on the far right?

20 THE WITNESS: This one?

21 THE COURT: Yes.

22 THE WITNESS: Just the dust.

23 THE COURT: So you would dust that picture.

24 THE WITNESS: Yes, yes.

25 THE COURT: Anything further?

Ecc2sal3

Amazquita Agudelo - Redirect

1 MR. BENSON: Nothing further, your Honor.

2 THE COURT: Sir, what did you observe Brent Drill
3 doing while he was working?

4 THE WITNESS: Manager.

5 THE COURT: I am asking you what tasks did he perform
6 that you personally observed.

7 THE WITNESS: Well, he was the person that was in
8 charge when we would all arrive, all of us employees of Fresco,
9 so that everything would be correctly in its place, clean, that
10 everything was ready and he was -- whatever a manager is in
11 charge of.

12 THE COURT: And what about Anthony Scotto? What did
13 you observe him do, if anything?

14 THE WITNESS: Well, he is the owner and he would
15 direct or give instruction to the managers, but he would also
16 would instruct us or give orders to us.

17 THE COURT: What about Mr. Vosilla? What did he do?

18 THE WITNESS: Exactly the same, but in the evenings.

19 THE COURT: The same as what?

20 THE WITNESS: Manager, that everything would be
21 properly in its -- the set-up would be -- that everything would
22 be clean.

23 THE COURT: Any questions? Any further questions?

24 MR. BENSON: Yes, your Honor.

25 RECROSS EXAMINATION

Ecc2sal3

Amazquita Agudelo - Recross

1 BY MR. BENSON:

2 Q. Let's start with respect to Mr. Drill. He was on the
3 service floor for the entire service, correct?

4 A. Yes.

5 Q. And he spent most of his time in the VIP section, correct?

6 A. In the whole part of the restaurant.

7 Q. He sold wine throughout the restaurant, correct?

8 A. Well, when he would work during the mornings, yes.

9 Q. He was an expert in wine, wasn't he?

10 A. Yes.

11 Q. And he would go around to the tables and explain the wine
12 and get the wine and pour the wine, correct?

13 A. No, no, not necessarily so.

14 Q. Which of that didn't he do?

15 A. He was the manager. He would give orders so that
16 everything would be proper and correct.

17 MR. BENSON: Move to strike. I asked him about the
18 wine.

19 THE COURT: The answer is stricken.

20 Q. I asked you previously -- you testified previously that he
21 went around the restaurant selling wine, correct?

22 A. No, I did not say it. I did not say that he was around --
23 going around the restaurant selling wine.

24 Q. Was he conversing with the customers about the wine?

25 A. Sometimes.

Ecc2sal3

Amazquita Agudelo - Recross

1 Q. And he also spent a lot of time in the VIP section of the
2 restaurant, correct?

3 A. He was all over the restaurant.

4 Q. Where is the VIP section?

5 A. Number one.

6 Q. Did you observe him there?

7 A. I saw him in one, two, three, at the bar.

8 Q. Did you observe him taking drink orders from customers?

9 A. The majority of times it was done by the waiters, but if it
10 was necessary and the waiter was not there, then he would do
11 it.

12 Q. So he would take drink orders.

13 He would also explain specials to the customers,
14 correct?

15 A. Sometimes.

16 Q. And he would also pour wine at the tables once it was
17 delivered, correct?

18 A. Sometimes.

19 Q. And he would also assist in running food from the kitchen
20 to the tables, correct?

21 A. Well, really? No.

22 Q. You never saw him running food to the tables?

23 A. Well, not in my whole lifetime, no, but there were very few
24 times.

25 Q. So you did see him doing that on occasion.

Ecc2sal3

Amazquita Agudelo - Recross

1 A. Yes.

2 Q. And if a customer had a problem during the meal, it was
3 Mr. Drill who would address that problem, correct?

4 A. If the waiter could not do it or solve it, then he would
5 go.

6 Q. And he would interact directly with the customers when he
7 did that, correct?

8 A. Yes.

9 Q. And all of those thing that we have just talked about were
10 the same with Mr. Vosilla, correct?

11 A. Yes.

12 Q. And all of these things took place during the entire
13 service, did they not?

14 A. Yes.

15 MR. BENSON: No further questions, your Honor.

16 THE COURT: You have no questions, right?

17 MR. ANDROPHY: If I could have just brief redirect?

18 THE COURT: All right.

19 REDIRECT EXAMINATION

20 BY MR. ANDROPHY:

21 Q. Did Mr. Drill do anything in addition to all of the things
22 that Mr. Benson just asked you about -- serving wine,
23 explaining specials, pouring wine, interacting with customers,
24 addressing customer issues? Did Mr. Drill do anything in
25 addition to all of those things?

Ecc2sal3

Amazquita Agudelo - Redirect

1 A. No. Well, that practically was what he did. He was
2 manager.

3 MR. ANDROPHY: Okay. I have no further questions.

4 THE COURT: Thank you, sir. You may step down.

5 (Witness excused)

6 THE COURT: We will take our 45-minute break at this
7 time.

8 (Luncheon recess)
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Ecc2sal3

A F T E R N O O N S E S S I O N

12:00 p.m.

MR. CLARK: Good afternoon, your Honor.

This is a preliminary issue. We have Mr. Francisco Lugo available, and we intend to call him as the next witness. One thing I did want to mention, because of the fact this is going to be going over Skype, that perhaps for this witness we use consecutive interpretation instead of simultaneous interpretation, because I think it is difficult for him to be able to hear more than one voice at any one time.

THE COURT: That's fine. The other thing is, you should feel free to have whomever is doing the questioning in front of the camera so that he can see that individual.

MR. CLARK: Yes, your Honor. My hope and intention was that we would use these two chairs in front of the computer so that he will always be able to see both the interpreter and the questioner and also you can sort of see in the corner what he is able to see and he will also be able to see you.

I think that the most difficult thing would potentially be his ability to hear you. Hopefully that's not going to be a large issue, but it is something where the questioner, whether that be me or opposing counsel, that we will have to be aware visually, some sort of sign that you said something. I haven't checked the acoustics from your chair.

THE COURT: Well, the interpreter is going to

Ecc2sal3

1 interpret for me, so if he can hear the interpreter, he will be
2 hearing me.

3 MR. CLARK: Hopefully that will work perfectly.

4 At this point plaintiffs would call Mr. Francisco Lugo
5 to testify.

6 FRANCISCO LUGO,

7 called as a witness by the plaintiffs

8 having been duly sworn, testified as follows:

9 THE INTERPRETER: He said in Spanish "I cannot hear
10 you very well. Would you please get closer to the microphone?
11 Excuse me."

12 THE WITNESS: Yes, I state that it is the truth.

13 THE DEPUTY CLERK: Please state your full name and
14 spell them slowly for the record.

15 THE WITNESS: My names is Francisco Lugo. I cannot
16 hear you.

17 MR. CLARK: I think he didn't hear the part about
18 spelling his name.

19 THE WITNESS: Excuse me. Excuse me very much,
20 Mr. Attorney, but I cannot understand you.

21 MR. CLARK: Please spell your name.

22 THE WITNESS: My name is Francisco Lugo.

23 THE COURT: That's fine. His name is Francisco Lugo.
24 I have got that.

25 MR. CLARK: Great.

Ecc2sal3

1 DIRECT EXAMINATION

2 BY MR. CLARK:

3 Q. Mr. Lugo, do you recognize this document?

4 THE INTERPRETER: Can I participate a bit more, if I
5 am authorized, to lower his hand or to instruct the attorneys
6 to instruct him. He still has had hand up. Now he has --

7 THE COURT: He is fine.

8 BY MR. CLARK:

9 Q. Do you recognize this document?

10 A. Yes, I have it.

11 Q. Is this document the declaration that you intend to use as
12 your direct testimony in this matter?

13 A. Yes, sir.

14 Q. Now, I am going to turn to the last page.

15 A. Yes.

16 Q. Is this your signature?

17 A. Yes, sir. My name I signed. I'm sorry.

18 MR. CLARK: At this point we would move --

19 THE COURT: There was a question, and the question is
20 was this your signature?

21 Q. Again I ask, is this your signature?

22 A. Yes; yes, sir.

23 MR. CLARK: At this point we would like to move this
24 into evidence as Plaintiffs' Exhibit 115.

25 MR. BENSON: No objection.

Ecc2sal3

Lugo - Direct

1 THE COURT: It is admitted.

2 (Plaintiff's Exhibit 115 received in evidence)

3 MR. CLARK: Your Honor we, would also correspondingly
4 seek to admit Exhibits 51, 52, 53, 54, and 55, all of which are
5 identified in the declaration.

6 MR. BENSON: No objection.

7 THE COURT: They are admitted.

8 (Plaintiff's Exhibits 51, 52, 53, 54 and 55 received
9 in evidence)

10 MR. CLARK: The plaintiffs have no further questions
11 for this witness at this time.

12 CROSS EXAMINATION

13 BY MR. BENSON:

14 Q. Good afternoon, Mr. Lugo.

15 A. (In English) Good morning, sir.

16 Q. You worked at Fresco Restaurant from November 2011 to
17 February of 2014, is that correct?

18 A. It is correct.

19 Q. Prior to that time, did you have experience in the
20 restaurant industry?

21 A. Yes, sir.

22 Q. And what was that experience?

23 A. What was my experience?

24 Q. Yes.

25 A. I worked a different Italian and French restaurant.

Ecc2sal3

Lugo - Cross

1 Q. As a busser?

2 A. (In English) Busser, yes, like a busser.

3 Q. Were you compensated in part by tips in those positions?

4 A. I cannot understand. Your voice is coming very choppy.

5 (Question repeated)

6 A. Yes.

7 Q. In Fresco Restaurant you were hired as a busser, correct?

8 A. I cannot understand. Your voice comes and goes. It comes
9 and goes.

10 Q. You were employed at Fresco Restaurant as a busser,
11 correct?

12 A. Yes, sir.

13 Q. And there were different busser assignments at the
14 restaurant, correct?

15 A. Correct.

16 Q. And those assignments included stocker, correct?

17 A. Yes, sir.

18 Q. And coffee person?

19 A. Yes, sir.

20 Q. And bar-back as well, correct?

21 A. Yes, sir.

22 Q. And did you serve in all of those roles when you worked at
23 Fresco Restaurant?

24 A. Yes, sir.

25 Q. On the lunch shift, you would arrive at 10 a.m., correct?

Ecc2sal3

Lugo - Cross

1 A. Yes, sir.

2 Q. And you would do side work when you arrived at the
3 restaurant, correct?

4 A. Correct, sir.

5 Q. And that side work involved folding napkins, correct?

6 A. Yes, sir, correct.

7 Q. And folding napkins assisted you in the service, correct?

8 A. Yes, sir.

9 Q. And you also put glasses at the service stations, correct?

10 A. Correct.

11 Q. And that was part of your regular duties as a busser also,
12 correct?

13 A. Yes, sir.

14 Q. And you would spend between 20 and 30 minutes doing side
15 work, correct?

16 A. Correct.

17 Q. And then you would eat the family meal, correct?

18 A. Correct, sir.

19 Q. And that was for 30 minutes, correct?

20 A. Correct.

21 Q. And at 11 a.m., you would start to set up the dining room
22 for the customers, correct?

23 A. (In English) That is correct.

24 Q. And the customers would start arriving at 11:30 a.m.,
25 correct?

Ecc2sal3

Lugo - Cross

1 A. (In English) That is correct, sir.

2 Q. And on the evening shift, you arrive at 4 p.m., correct?

3 A. (In English) That is correct.

4 Q. You would spend the same 20 or 30 minutes performing side
5 work, is that correct?

6 A. Yes, sir.

7 Q. And it's the same side work that you perform at lunch,
8 correct?

9 A. Yes.

10 Q. Folding napkins and placing glasses at the station,
11 correct?

12 A. It is correct.

13 Q. And at 4:30, you would have a 30-minute family meal,
14 correct?

15 A. It is correct.

16 Q. And you performed no work during that family meal, correct?

17 A. It is correct.

18 Q. And then at 5:00 you would prepare the dining room for the
19 customers to arrive at 5:30, correct?

20 A. I lost the image. Excuse me.

21 That is correct.

22 Q. At times were you assigned to the stocker assignment? At
23 times did you perform the assignment of stocker?

24 A. Yes, sir.

25 Q. Approximately how often?

Ecc2sal3

Lugo - Cross

1 A. Two times per week.

2 Q. And in that position, you brought clean supplies to the
3 dining room for use in service with the customers, correct?

4 A. I am sorry, I cannot understand your voice very clearly.

5 MR. BENSON: Would the court reporter read the
6 question, please.

7 (Record read)

8 A. That is correct.

9 Q. And those things that the stocker brought to the dining
10 room assisted the bussers in being able to do their job,
11 correct?

12 A. Yes, sir.

13 Q. It made it easier for them to have the supplies close by,
14 correct?

15 A. It is correct.

16 Q. And as a result of having those supplies in the dining
17 room, they were able to turn over the tables more quickly,
18 which helped the overall service, correct?

19 A. It is correct, sir.

20 Q. The bussers and runners, regardless of their assignments,
21 helped each other out during the service?

22 A. It is correct, sir.

23 Q. And many times, regardless of assignment, whomever was free
24 would assist in running food from the kitchen to the dining
25 room, correct?

Ecc2sal3

Lugo - Cross

1 THE INTERPRETER: I lost it.

2 (Read record)?

3 A. (In English) Correct, sir.

4 Q. And that was because it was important to get the food from
5 the kitchen to the dining room floor in as fast a time as
6 possible?

7 A. Correct.

8 Q. Did you ever work as a coffee person?

9 A. Only as a helper.

10 THE COURT: What does the helper do?

11 THE WITNESS: When the person that was assigned to
12 prepare coffee was very busy, they could not do it all by
13 himself in order to deliver the coffees over to the tables, and
14 one would assist him by taking the coffees to the tables.

15 Q. And in those circumstances -- strike that.

16 And in those situations, both the coffee person and
17 the assistant would run the drinks from the coffee station to
18 the service floor, correct?

19 A. Yes. The bussers would assist. That is correct.

20 THE COURT: The question is whether or not the coffee
21 maker was delivering the coffee to the tables.

22 THE WITNESS: Yes, sir.

23 Q. When you were assigned as a stocker -- strike that.

24 Isn't it true that when you were assigned as a
25 stocker, you never took the place of a dishwasher for any

Ecc2sal3

Lugo - Cross

1 portion of a shift?

2 A. No, sir. That is not correct.

3 Q. Is it your testimony that you replaced the dishwasher for
4 any portion of a shift when you were a stocker?

5 A. Okay. For certain occasions, for whatever reason, the
6 dishwasher was sent to go and bring back, and when we were very
7 busy, I had to wash the silverware and the plates for the main
8 dining room.

9 Q. When did that happen?

10 A. Very frequently.

11 Q. At what time during the shift did it happen.

12 A. It happened when it was fully busy during the lunch and the
13 dinner.

14 Q. Okay. At what time of day did it happen?

15 A. Was the question at what true, real, exact time? Was that
16 the question?

17 Q. Yes. I am trying to understand when during a shift you
18 alleged to have taken the place of a dishwasher.

19 A. The hour is a nondefined hour because . . .

20 Q. Were you through?

21 A. Well, because I repeat one more time, there were occasions
22 when the dishwasher was very busy, and I could not wait until
23 he would provide me with flatware or plates, so then I would
24 get in there and do it there myself.

25 Q. And when -- so would that happen throughout the shift?

Ecc2sal3

Lugo - Cross

1 A. I just mentioned, no, that only in certain occasions, not
2 every day.

3 Q. And only those occasions where it was very busy, is that
4 correct?

5 A. That is correct, sir.

6 Q. And on those occasions, is it your testimony that there was
7 a dishwasher present next to you while you were washing those
8 dishes?

9 A. Excuse me, yes.

10 I can listen to you, but I have lost the image of you.

11 THE COURT: That is not a problem, if he can hear.

12 THE WITNESS: Yes, I do hear you.

13 (Question read)

14 A. Yes, sir.

15 Q. And for how many minutes did you do the washing of the
16 dishes?

17 THE COURT: The connection has been broken and we are
18 trying to reestablish the connection.

19 (Pause)

20 MR. CLARK: Mr. Lugo?

21 THE WITNESS: Yes, sir. Please. I don't know.

22 MR. CLARK: Okay. Just one moment.

23 MR. BENSON: I believe there is a question pending.

24 (Record read)

25 THE WITNESS: Mr. Interpreter, can I call on the

Ecc2sal3

Lugo - Cross

1 phone? I cannot hear very well.

2 THE COURT: Would the parties consent to a telephone
3 testimony?

4 MR. CLARK: Plaintiffs would consent. My
5 understanding is that may potentially be an issue for
6 defendant. I leave it to your determination.

7 MR. BENSON: Defendants are interested in moving this
8 along, so we will agree.

9 THE COURT: We will move the court telephone. We will
10 turn on the speaker and speak into the court telephone.

11 MR. BENSON: So he can remain on the screen?

12 THE COURT: Is he able to call us? I don't know that
13 I can make an international call on that line.

14 (Pause)

15 THE COURT: I don't think he can hear.

16 (Question repeated)

17 THE WITNESS: Yes, I can do that. I have no problem,
18 that. I will dial.

19 (Pause).

20 THE INTERPRETER: The phone that you must dial after
21 your access code for dialing from Mexico to the United States
22 is the following, so then you must dial whichever way you need
23 to dial from Mexico to come to the United States and then you
24 will please dial the following numbers.

25 (Speaking Spanish).

Ecc2sal3

Lugo - Cross

1 THE COURT: We are going to take a bathroom break for
2 a couple of minutes.

3 (Recess)

4 THE COURT: You may continue.

5 MR. BENSON: I believe there is a question pending.

6 (Record read)?

7 A. Ten, 15 minutes approximately.

8 Q. And on those occasions where you allegedly took -- well,
9 you weren't replacing a dishwasher in those situations,
10 correct? You were working side by side with a dishwasher. Is
11 that your testimony?

12 A. Yes.

13 Can I make a commentary?

14 THE COURT: Go ahead.

15 THE WITNESS: Okay. When the shift was over, one
16 could not leave until the station had been left completely
17 clean, and one would have to do that as the dishwasher had to
18 do his extra jobs, too, so that everybody could leave after
19 their own shift.

20 THE COURT: But the question, sir, was whether or not
21 the dishwasher was also washing dishes when you were washing
22 dishes.

23 THE WITNESS: No. A thousand apologies, no.

24 BY MR. BENSON:

25 Q. So when you previously testified that you worked side by

Ecc2sal3

Lugo - Cross

1 side with the dishwasher for the ten or 15 minutes, when you
2 did this, was that accurate?

3 A. No, sir.

4 Q. So the dishwasher was not present during the ten to 15
5 minutes that you were doing this?

6 A. No, he was not present.

7 Q. And this was on both the lunch shift and the dinner shift?

8 A. That is correct, sir.

9 Q. And it was at the end of both shifts?

10 A. In part and also when we were very busy because I could not
11 wait until he could give me flatware, plates, and glasses. I
12 would go in there and do them myself, wash the dishes.

13 Q. On these occasions, were you directed by anyone to wash the
14 dishes or was this something that you did on your own?

15 A. I did it on my own.

16 Q. A lunch shift began at 10, correct?

17 A. That is correct.

18 Q. It ended at different times depending on whether there were
19 customers in the station to which you were assigned, correct?

20 A. It is correct.

21 Q. And the same would be true with respect to the dinner
22 shift, correct?

23 A. It is correct, sir.

24 Q. And when you were not assigned to be -- strike that.

25 When you were a closer, you had to wait until the last

Ecc2sal3

Lugo - Cross

1 customer left, correct?

2 A. That is correct.

3 Q. And the closer would leave the dining room later than if
4 you were not assigned as a closer, correct?

5 A. That is correct.

6 Q. And if you were not the closer on the lunch shift, it
7 normally ended around 2:30. Is that correct?

8 A. That is correct.

9 Q. And if you weren't the closer at dinner, it normally ended
10 at some time between 9:30 and 10:00, is that correct?

11 A. Yes.

12 Q. And even if you were the closer, it would be rare to work
13 past 10:30 at night, correct?

14 A. No, we would leave later.

15 Q. 11:00?

16 A. 10:30, 11; that would be correct.

17 Q. Brent Drill only received tips when he worked as a floor
18 captain, correct?

19 A. Yes.

20 THE WITNESS: Can I make an observation?

21 MR. BENSON: He answered the question.

22 THE COURT: No, sir, you cannot.

23 (Continued on next page)

ECC5sal4

Lugo - cross

1 BY MR. BENSON:

2 Q. And Attilio Vosilla only received tips when he served as a
3 party captain, correct?

4 A. It is my understanding that he would receive a salary and
5 tips.

6 Q. But the answer to my question -- strike that.

7 But isn't it true that he only received tips when he
8 served as a party captain?

9 A. It is correct.

10 Q. You never observed Brent Drill fire anyone, correct?

11 A. No. That is not correct. I did see Brent Drill fire a
12 person.

13 Q. Who was that?

14 A. Julian. I cannot remember his last name but it was Julian.

15 Q. Was that Mr. Amazquita?

16 A. Yes, sir.

17 Q. Did that incident take place after January 1st of 2013?

18 A. The day I cannot remember.

19 Q. Do you know whether or not Mr. Drill or Anthony Scotto made
20 the decision to terminate his employment?

21 A. Okay. The first time he was fired by Brent Drill and the
22 second time he was fired by Mr. Anthony.

23 Q. When was the first time that he was fired?

24 A. Okay. The date I do not know it, but they fired him when
25 he did not want to work at the bar.

ECC5sal4

Lugo - cross

1 Q. And on that occasion Mr. Scotto brought him back to the
2 restaurant; is that your testimony?

3 A. On that occasion, yes, but later on he fired him some
4 months later.

5 Q. All of that took place in 2013, correct?

6 A. It is correct, sir.

7 Q. Did you ever observe Brent Drill fire anyone prior to
8 January 1st of 2013?

9 A. No.

10 Q. Did you ever observe Brent Drill discipline anyone prior to
11 January 1st, 2013?

12 A. No.

13 MR. BENSON: I have no further questions at this time,
14 your Honor.

15 THE COURT: Redirect?

16 MR. CLARK: If I could have just one moment to confer
17 with co-counsel?

18 (Counsel conferring)

19 MR. CLARK: We have no redirect at this time.

20 THE COURT: I have some questions.

21 Were there any managers at the restaurant?

22 THE WITNESS: Yes.

23 THE COURT: And who were they?

24 THE WITNESS: Brent Drill and what's his name?

25 Mr. Vosilla. Attilio.

ECC5sal4

Lugo - cross

1 THE COURT: Were there any floor captains?

2 THE WITNESS: They would also perform or act as
3 captains also.

4 THE COURT: Do you have any questions?

5 MR. BENSON: None, your Honor.

6 MR. CLARK: I have none.

7 THE COURT: Thank you, sir.

8 THE WITNESS: Okay.

9 THE COURT: We are finished.

10 MR. CLARK: Your Honor, if I could have a moment to
11 just disconnect the call and the link?

12 THE COURT: Yes.

13 THE WITNESS: Okay. Thank you very much. Can I now
14 leave?

15 THE COURT: Yes.

16 THE WITNESS: Okay.

17 THE WITNESS: (In English) Thank you very much.

18 MR. ANDROPHY: Plaintiffs call Vicente Leon.

19 VICENTE LEON,

20 called as a witness by the Plaintiffs,

21 having been duly sworn, testified as follows:

22 THE DEPUTY CLERK: Please state your full name and
23 spell them slowly for the record.

24 THE WITNESS: Vicente Leon.

25 THE COURT: You may inquire.

ECC5sal4

Lugo - cross

1 THE WITNESS: V-I-C-E-N-T-E L-E-O-N.

2 DIRECT EXAMINATION

3 BY MR. ANDROPHY:

4 Q. Good afternoon, Mr. Leon. Do you recognize the document I
5 have just put before you?

6 A. Yes, sir.

7 Q. Is this the written declaration you submit as your direct
8 testimony in this trial?

9 A. Yes, sir.

10 Q. And if you turn to the last page; is that your signature on
11 the last page?

12 A. Yes, sir.

13 MR. ANDROPHY: Your Honor, we ask that this
14 declaration be admitted as Plaintiff's Exhibit 116.

15 THE COURT: Any objection?

16 MR. BENSON: No objection, your Honor.

17 THE COURT: 116 is admitted.

18 (Plaintiff's Exhibit 116 received in evidence)

19 MR. ANDROPHY: We also ask that exhibits 48, 49, 50
20 and 85 be admitted.

21 MR. BENSON: No objection, your Honor.

22 THE COURT: They are admitted.

23 (Plaintiff's Exhibits 48, 49, 50 and 85 received in
24 evidence)

25 MR. ANDROPHY: We have no further direct examination

ECC5sal4

Leon - direct

1 at this time.

2 THE COURT: Cross-examination?

3 CROSS EXAMINATION

4 BY MR. BENSON:

5 Q. Good afternoon, Mr. Leon.

6 A. Good afternoon.

7 Q. You were hired by Fresco in January of 1999, correct?

8 A. Yes, sir.

9 Q. And you continue to work there to this very day, correct?

10 A. Yes, sir.

11 Q. During that time have you held any other jobs?

12 A. Yes, sir.

13 Q. Do you currently hold another job?

14 A. Yes, sir.

15 Q. What is your current job?

16 A. Japanese restaurant.

17 Q. How long have you held that job?

18 A. A year, perhaps.

19 Q. Prior to that did you have another job at another

20 restaurant other than Fresco?

21 A. Before I started to work at Fresco? Yes.

22 Q. So, the only job that you held in addition to your job at

23 Fresco since January of 1999 has been the Japanese restaurant

24 job which you held approximately a year. Is that accurate?

25 A. Whether I have worked only at Fresco since I started there?

ECC5sal4

Leon - cross

1 Q. That is my question, yes.

2 A. Weekends at some other places also.

3 Q. So have you held jobs at other restaurants for most
4 weekends since you have been employed at Fresco?

5 A. Yes, sir; because my schedule at Fresco has been very,
6 variable.

7 Q. Has your schedule at Fresco allowed you to work at those
8 other jobs?

9 A. Yes, sir.

10 Q. You were hired by Anthony Scotto, correct?

11 A. I do not recall exactly by whom, but I would think so, yes.

12 Q. You don't recall that you were hired by Mr. Scotto?

13 A. Well, I was working at another restaurant and the person
14 who invited me to work over there had spoken with the gentleman
15 who said for me to go over there for an interview and that the
16 person who interviewed me was Jerry who was the manager at that
17 time.

18 Q. So it is your testimony that it wasn't Mr. Scotto, correct?

19 A. Mr. Scotto, from what I can remember who just -- he just
20 told the person because -- he said whether I was a strong
21 person because the restaurant was very busy.

22 Q. Did you take a deposition in this matter, sir?

23 A. Yes, sir.

24 Q. And were you asked questions and did you give answers?

25 A. I do not remember.

ECC5sal4

Leon - cross

1 Q. Were you sworn to tell the truth during that deposition?

2 A. Yes, sir.

3 Q. And did you tell the truth, to the best of your ability,
4 during that deposition?

5 A. More than the truth, only the truth.

6 Q. I'm going to show you that deposition; specifically I
7 direct you to page 97, line 21. Were you asked the following
8 questions and did you give the following answers:

9 "Q And then Anthony gave you a job offer?

10 "A Yes.

11 "Q And he hired you as a busboy?

12 "A Yes."

13 Were you asked those questions and did you give those
14 answers?

15 A. Yes, Mr. Anthony, he provided us to fill out certain sheets
16 where to write things like address and the one phone number.

17 Q. And he gave you a job offer, correct?

18 A. He first -- I was on probation. I was -- I was in
19 training.

20 Q. And then he gave you a job offer, correct?

21 A. Yes.

22 Q. There were different assignments for bussers at Fresco,
23 correct?

24 A. Yes, sir.

25 Q. One of those assignments is stocker, correct?

ECC5sal4

Leon - cross

1 A. Yes.

2 Q. And you, yourself, have been assigned to the stocker role
3 at times, correct?

4 A. Yes, sir.

5 Q. And has that been true throughout the entire time that you
6 have been employed at Fresco?

7 A. I had shifts as a stocker, yes.

8 Q. You continue to have shifts as a stocker?

9 A. Until the beginning of this year, no, I have not worked as
10 a stocker.

11 Q. So, from the beginning of this year on you haven't been
12 assigned as a stocker anymore? Is that your testimony?

13 A. I do not remember exactly. Perhaps they have placed me as
14 such maybe once, but I do not remember exactly.

15 Q. Now, I draw your attention to paragraph 16 of your
16 declaration. It reads, and I quote: Sometimes, when I worked
17 as a stocker, I was required to do the job of a dishwasher.

18 A. Yes, sir.

19 Q. When is the last time that you were required to do the job
20 of a dishwasher?

21 A. I do not remember but it was during -- during the past
22 years before the machine started doing what -- oh, before they
23 put the machine, the clock for registering when we came in and
24 we left, the entrance, when we came in.

25 Q. So, it is your testimony that you haven't been required to

ECC5sal4

Leon - cross

1 do the job of a dishwasher since the time clock was put in in
2 2011?

3 A. From 2011 towards nowadays where when things became
4 different.

5 Q. Is it your testimony, sir, that since 2011 you have never
6 been required to perform the job of a dishwasher when you were
7 assigned to the stocker assignment?

8 A. From 2011 towards nowadays? No.

9 Q. And, based on your observations, that is true with respect
10 to other bussers, correct, who have the stocker role?

11 A. There have been stockers but I do not work many shifts at
12 the Fresco Restaurant presently.

13 Q. I'm saying based on your observations, sir, since the time
14 clock was put in in 2011, you have not observed any other
15 busser who is assigned to the stocker role performing the
16 functions of a dishwasher. Isn't that accurate?

17 A. I -- I say to that question that I have been working just
18 not very much at Fresco Restaurant from 2011 to now.

19 Q. So, I'm asking you what you observed from 2011 to the
20 present and on those occasions when you have been in Fresco
21 Restaurant have you observed any stocker washing dishes for any
22 portion of the shift?

23 A. Me personally? No.

24 Q. Now, prior to the time when the time clock was put in is it
25 your testimony, sir, that you were required to do the job of a

ECC5sal4

Leon - cross

1 dishwasher?

2 A. Yes, sir.

3 Q. Was that every time that you had -- strike that.

4 Was that every time you were assigned to the stocker
5 role?

6 A. Not every time that I worked as a stocker but, yes, there
7 were a couple of times the chef would order us to go and to
8 wash dishes.

9 Q. So it was a couple of times that you alleged that that
10 happened?

11 A. It has to do with me personally? Yes.

12 Q. And, by a couple of times do you mean less than five?

13 A. I have truly perhaps gone to or a maximum or most, at the
14 most three shifts as a stocker but not more than those.

15 Q. Are you talking -- when you say that do you mean that you
16 had that many shifts per week? Or that many shifts in total?

17 A. The schedule changes. They are different from week to
18 week.

19 Q. I am trying to get a sense, sir, of when it is that you
20 allege that you were required to perform the job of a
21 dishwasher.

22 A. During the shifts when I was a stocker.

23 Q. Was that every shift that you were a stocker?

24 A. Yes. Well, there were two shifts per week, yes.

25 Q. What years was that?

ECC5sal4

Leon - cross

1 A. I cannot remember the year.

2 Q. It wasn't every year, correct?

3 A. Not every year. When it was my turn to wash the dishes it
4 was during one summer.

5 Q. So it is your testimony that during one summer, from 1999
6 to the present, there were some occasions when you worked as a
7 stocker where you were required to do the job of a dishwasher?
8 Is that correct?

9 A. I repeat: For one summer, yes, I was sent over to wash the
10 dishes.

11 Q. And you don't remember what year that was?

12 A. No, sir.

13 Q. And that was never for a full shift, correct?

14 A. No. Approximately 30 minutes, perhaps.

15 Q. And that didn't happen every shift before that summer,
16 correct?

17 A. I repeat: The shifts when I was a stocker, yes.

18 Q. And by summer do you mean the months of July and August?

19 A. The slow months that are called summer, no.

20 Q. Well, when you say that for one year you were required to
21 wash dishes for 30 minutes when you were a stocker, what months
22 did you mean by that?

23 A. The months that are a little bit slow at the restaurant.

24 Q. Which months are those?

25 A. They can be July, August, May.

ECC5sal4

Leon - cross

1 Q. Do you recall when, during the shift, that was when you
2 were allegedly assigned to wash dishes in that one year in the
3 slow months?

4 A. The year I cannot remember, sir.

5 Q. I'm asking when, during the particular shift, you were
6 asked to do that.

7 A. After one had finished eating at 5:00 Mr. Anthony would
8 tell the chefs to take -- not to give so many hours to the
9 dishwashers and take hours away from them so that they could
10 arrive at 6:00 and, meanwhile, we could wash those dishes, the
11 ones that the employees use for eating. So that then,
12 afterwards, before Mr. Anthony was a little bit strict, he did
13 not want that there were any dirty dishes at the dishwasher
14 station. He wanted the -- the stocker had to leave that
15 station very, very clean without any glasses or any glasses to
16 be there.

17 Q. So, is it your testimony that that happened at 5:00?

18 A. Yes. When all, all the dishes that had been used by the
19 employees were there.

20 Q. And when did the dishwasher return? 5:30?

21 A. Not 5:00, 5:30, sometimes at 6:00 during the summer, during
22 the summer, during the slow time.

23 Q. Now, did you ever work as a runner?

24 A. Yes, sir.

25 Q. Isn't it true that there is a position at the restaurant,

ECC5sal4

Leon - cross

1 in the kitchen in front of a microphone, that is usually
2 performed by the chef or the sous chef that calls out the food
3 orders to the cooks?

4 A. Yes, sir.

5 Q. And there is another position, is there not, that stands
6 next to that person that helps coordinate the dishes so they
7 are taken to the proper positions in the dining room? Is that
8 correct?

9 A. Yes, sir; the expediters.

10 Q. And, by expediter do you mean the person who stands next to
11 the person at the microphone?

12 A. Mr. Raul is next to the microphone requesting the orders
13 from the cooks.

14 When Roberto Martinez was working he was an expediter
15 and he would send us with the food over to the runners. And
16 then another one came around because he left and then another
17 one came, Pablo Alvarado came. When Pablo left then Klever
18 stayed there for a longer time. I do not know his last name.

19 Q. These are runners who you are mentioning, correct?

20 A. They are runners but they are the ones that stay for a long
21 time next to the chef sending the runners out with the food.

22 Q. So, a runner, who has experience, stands next to the chef
23 with a microphone and assists, at times, with sending the food
24 out to the dining room, correct?

25 A. Not correct.

ECC5sal4

Leon - cross

1 Q. The person who performs this function -- strike that.

2 Is the person who ever performs this function a
3 runner?

4 A. Well, a uniform is a runner but he is the person that sends
5 the dishes out with the runners.

6 Q. And that person also runs the food out with the runners,
7 correct?

8 A. A couple of times, yes. There was no one else when the
9 runners are very busy, for example, if they're at the Tuscan
10 Room with a lunch.

11 Q. So, when the runners are busy, the runner who may be
12 serving in this role runs food to the dining room? Is that
13 your testimony?

14 A. Excuse me. I did not understand.

15 Q. Is it your testimony that only when the runners are busy
16 does the person who is assisting run food to the dining room?

17 A. That is, therefore, I am making it clear: That is the
18 person that is next to the sous chef is a runner who knows more
19 about the food in their organization so that the dishes come
20 out in the proper order.

21 Q. And that person, when it is busy, also assists in running
22 the food out to the dining room, correct?

23 A. If there is not another runner present, yes, he does do it.

24 Q. Well, there is a constant need for extra hands to run food
25 out to the dining room, is there not?

ECC5sal4

Leon - cross

1 A. They will use a busboy if they see him and then they tell
2 him to take a dish out. A runner can take three dishes out and
3 he can carry three dishes out in his hands, and if it is a
4 table of four persons then a runner can take only one dish.

5 Q. And there are times when the runner, who assists in getting
6 the food out, fills in during his shift when the chef or the
7 sous chef is otherwise occupied; is that correct?

8 A. During the mornings the sous chef, unless he has phone
9 calls that are made to him because he remains there present,
10 Klever.

11 Q. So, Klever is the person who serves in this role?

12 A. As an expediter, yes.

13 Q. And so, Klever would be a good person to ask how often he
14 would run food to the dining room in order to get an idea of
15 how much food is run at this position? Is that correct?

16 A. There are many things that need to be made clear.

17 During this moment in time when it is busy, at this
18 time when it is busy, all years, they used four runners, yes.
19 Three runners are in charge of running appetizers, dessert.
20 When it is already now the time for dessert afterwards, or when
21 the clients or the main courses, then he is just ordering
22 direct next to the window at the kitchen so that the runner can
23 get there and quickly take the food out.

24 Q. My question is: Is Klever the right person to speak to to
25 find out how much food a person in this role runs during a

ECC5sal4

Leon - cross

1 particular shift?

2 A. Yes. You can talk to him. Yes.

3 Q. And you, yourself, on occasion, have held this role,
4 correct?

5 A. Yes. As a busboy, yes, I have performed it.

6 Q. No, I'm asking you if you have performed the role that you
7 call the expediter.

8 A. No, sir.

9 Q. You have never done it?

10 A. No, sir.

11 Q. Now, let's go through a typical day. You arrived at 10:00
12 a.m., correct, for a lunch shift?

13 A. Yes. Before 2011, yes, we would all arrive at 10:00 in the
14 morning, yes.

15 Q. Well, there were some opening people and closing people,
16 correct?

17 A. Before 2011? No.

18 Q. So, it is your testimony that, prior to 2011, the
19 restaurant did not utilize closing people in its scheduling?

20 A. Busboys? No.

21 Q. So it did with respect to waiters and runners? Is that
22 correct?

23 A. Runners all the time, there is always two closers, one for
24 the morning during lunch and another one during the evening for
25 the dinner so then there are two.

ECC5sal4

Leon - cross

1 Q. And it is your testimony that there were no closing bussers
2 scheduled prior to 2011?

3 A. Busboys? No.

4 Q. Would that be true with respect to both the lunch shift and
5 the dinner shift?

6 A. Yes, because every one of us, we all had to come in at 4:00
7 in the afternoon.

8 Q. And so, it is your testimony that the restaurant put in
9 place a new practice when it instituted the time clock with
10 respect to the scheduling of bussers?

11 A. Yes, sir.

12 Q. And is it your testimony that you have no recollection of
13 there being closing bussers on the schedule prior to that time?

14 A. I can remember that. I do not remember the year but the
15 gentleman during this time, he was a busser during -- during
16 the previous years before 2011, during the times when it was
17 busy for these times during November and December, and the busy
18 time would start from September, perhaps.

19 Q. So, is it your testimony that during busy times, prior to
20 2011, the company would schedule closing buzzers?

21 A. No, sir; stockers. It was one stocker would arrive early
22 to prepare the station and another stocker who would arrive
23 later would need to close the last thing by the clients.

24 Q. And would those stockers be listed on the schedule?

25 A. The schedules from 2011, back, it was always the stockers.

ECC5sal4

Leon - cross

1 Stockers.

2 Q. In your declaration at paragraph 23, page 4 you state, and
3 I quote: Additionally, before 2011, when I worked as a busser,
4 I was required to do work that did not involve customer
5 service.

6 Do you see that, sir?

7 A. Yes, sir.

8 Q. So, is it your testimony that after 2011 you were not
9 required to do work that did not involve customer service?

10 A. Excuse me?

11 Q. You say here that before 2011, when you worked as a busser,
12 you were required to do work that did not involve service. The
13 time was very specific, correct?

14 A. As a busboy I did work.

15 Q. So, is it your testimony that before and after 2011, when
16 you worked as a busser you were required to do work that did
17 not involve customer service?

18 A. Before 2011? Yes.

19 Q. And after 2011, no, correct?

20 A. I would do my job, the job that corresponded to me.

21 Q. I don't think that is responsive to my question. I
22 respectfully ask the court reporter to read it back again.

23 (Record read)

24 A. Yes. In other words, the job as a busboy. In other words,
25 another thing such as a coffee maker, barback.

ECC5sal4

Leon - cross

1 Q. Are you through answering, sir?

2 A. Yes.

3 Q. So the record is clear and I understand your testimony, it
4 is that the things that you list here in paragraph 23 you only
5 did before 2011; is that accurate?

6 A. Personally for me? Yes.

7 Q. And prior to 2011 -- strike that.

8 Bringing dishes and chairs and room dividers up and
9 down between the main dining area and the party room upstairs
10 were part of your normal responsibilities as a busser, correct?

11 A. Yes, because the lady would always -- we do not know if
12 when she did -- I do not know whether she did not take her
13 reservations properly, because at every moment she would make
14 us to ask her four, five -- for us to go back to three.

15 Q. So, the dining room had to be set up differently depending
16 on the number of reservations it had and whether or not it was
17 hosting parties, correct?

18 A. Yes. Supposedly the first sitting, it is the waiters, the
19 ones who are in charge for doing that.

20 Q. The waiters are in charge of setting up the dining room?

21 A. During the first sitting, yes.

22 Q. So, would the waiters also bring dishes, chairs and room
23 dividers up and down between the main dining room and the party
24 room upstairs?

25 A. No, sir. Only the busboys.

ECC5sal4

Leon - cross

1 Q. Because it was your responsibility to set the dining room
2 up so that the customers could be served, correct?

3 A. Yes, but sometimes we would be having to do something and
4 the waiters were just standing there.

5 Q. Okay. And this work that you say you did before 2011, it
6 would take approximately 30 minutes, correct?

7 A. What job? To bring chairs upstairs or what are you
8 referring to?

9 Q. The jobs that are listed in paragraph 23 of your
10 declaration.

11 A. Could you repeat it again? I do not understand English.

12 Q. My question is the jobs that you list in paragraph 23, they
13 would take approximately one half hour to perform, correct?

14 MR. ANDROPHY: If someone could read those to the
15 witness? He just said he can't read it and understand the
16 English.

17 MR. BENSON: I apologize.

18 THE COURT: So you are talking about what is in the
19 second sentence?

20 MR. BENSON: Yes, what is in the second sentence;
21 that's correct, your Honor.

22 THE COURT: Would the interpreter read the second
23 sentence to the witness?

24 INTERPRETER: Yes, your Honor. Let me get my glasses,
25 please.

ECC5sal4

Leon - cross

1 THE WITNESS: It would take me half an hour, yes, but
2 things were done during different times also. For example, the
3 lady, the owner of the restaurant would always, when she saw
4 that there was dirt in the stairway, she would send us, order
5 us to go sweep the stairs and the gentlemen could never, just
6 standing, for example, before starting a lunch with the
7 napkins, with the sheets --

8 INTERPRETER: As the one for beds, I asked him in
9 English and he said yes. He said the sheets that arrive with
10 the delivery.

11 THE WITNESS: The gentleman receives a bag with dirty
12 table clothes who are torn -- that are torn, and then cover bed
13 spreads or sheets they could be called.

14 INTERPRETER: Verbatim.

15 THE COURT: What did you use those materials for?

16 THE WITNESS: The runner cuts them up with a knife
17 and -- cuts them up to the size of a standard napkin and with
18 those we would clean the walls, dust them.

19 At that time, on those previous times there were some
20 black chairs that, when there were parties for 40 or 50 persons
21 at the private party room, excuse me, but the chairs and the
22 back rest of those chairs would stain the walls with a black
23 stain. And so, the gentleman wanted us, that with those rags,
24 we would clean the walls.

25 MR. BENSON: Your Honor, I move to strike as

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Leon - cross

1 non-responsive.

2 MR. ANDROPHY: I think he went on a necessary tangent
3 because there was some question as to what these rags were that
4 he described in responding to the question.

5 THE COURT: I certainly am not going to strike that
6 portion that is responsive to my question, counsel.

7 MR. BENSON: I understand that, your Honor, so I'm not
8 suggesting otherwise.

9 THE COURT: So I am going to permit you to reask your
10 question. Do you want your question read back?

11 MR. BENSON: That would be helpful.

12 (Record read)

13 INTERPRETER: Do you want the answer?

14 MR. BENSON: Yes.

15 THE WITNESS: Yes, sir. 20 minutes.

16 BY MR. BENSON:

17 Q. And, is it your testimony that you were required to do the
18 things you list in paragraph 23 every day?

19 A. When it was my turn to work those morning shifts.

20 Q. And when is it your testimony, during this shift, that you
21 did this work?

22 A. Before we started a lunch.

23 Q. You also worked as a coffee person, correct?

24 A. Yes, sir.

25 Q. And you worked as a coffee person on both lunch shifts and

ECC5sal4

Leon - cross

1 dinner shifts, correct?

2 A. Yes, sir.

3 Q. And your job in that role was to pour and deliver beverages
4 to the customers, correct?

5 A. Yes, sir.

6 Q. You worked at the restaurant a long time, correct, sir?

7 A. Yes; from the year '99.

8 Q. And the restaurant used to be busier than it has been in
9 recent years, correct?

10 A. Yes; there was a difference.

11 Q. And that difference goes back to 2008 approximately,
12 correct?

13 A. From the time I started at the restaurant that they gave me
14 an opportunity for working it was very busy, the restaurant,
15 during the winter time.

16 Q. And now it is less busy, correct?

17 A. It has gone down a bit. It has been a little bit less.

18 Q. It was a lot less than it was in 2007 and 2008, correct?

19 A. Yes, because truly, really, as we did not punch a clock
20 because then we would work more shifts, nine, ten, eight.

21 (Continued on next page)

22

23

24

25

Ecc2sal5

Leon - Direct

1 THE INTERPRETER: Your Honor, some time back when he
2 said that he was on trial, if it would be proper to correct the
3 record, I said probation. A much better way of saying it, I
4 would have, instead of "on probation" I would have said "trial
5 basis," if it would be proper to correct the record.

6 THE COURT: That's fine.

7 BY MR. BENSON:

8 Q. In your declaration, at paragraph 63, you allege that Brent
9 Drill could and did send employees home or suspend if they
10 acted improperly or were not at the restaurant on time.

11 Isn't it true that you have no specific examples of
12 that prior to January of 2013?

13 A. Yes. He dismissed a person. I cannot remember the year
14 exactly, but he did fire him.

15 Q. And that person is, according to your declaration, at
16 paragraph 63 named Gelacio. Is that correct?

17 A. Yes.

18 Q. Is that the only example that you can think of where
19 Mr. Drill disciplined or terminated somebody?

20 A. That was the only person that I did see, yes.

21 Q. And on that occasion, is it your testimony that Mr. Drill
22 was the individual who terminated his employment?

23 A. Yes, sir.

24 Q. Do you know what, if any, role Anthony Scotto played in
25 that?

Ecc2sal5

Leon - Direct

1 A. He was not present at that moment there.

2 Q. So do you know what role he played?

3 A. Who? Brent or Gelacio.

4 Q. Mr. Scotto.

5 A. I do not know really.

6 THE COURT: Well, what does he do? My question is,
7 what does he do? What does Mr. Scotto do? I'm sorry. I am
8 disagreeing with the interpreter. I am saying "what does he
9 do" in the present tense.

10 THE WITNESS: He is there on the dining room -- in the
11 dining room and he is there with the clients. He greets them.
12 In other words, he welcomes them.

13 THE COURT: Are there managers at the restaurant?

14 THE WITNESS: Yes, sir.

15 THE COURT: And who are they?

16 THE WITNESS: During the evening, Mr. Attilo.

17 THE COURT: During the day?

18 THE WITNESS: Mr. Brent.

19 BY MR. BENSON:

20 Q. Were there captains?

21 A. Yes.

22 Q. Isn't it true that prior to January of 2013, Mr. Drill's
23 job was floor captain?

24 A. That I know of, he was a manager.

25 Q. Do you know that he was also a floor captain?

Ecc2sal5

Leon - Direct

1 A. I know that he was a manager, because if any mistake was
2 made by a waiter it would go directly to him for him to go back
3 to the kitchen to find out where the mistake had been made.

4 THE COURT: When a worker makes an error, who corrects
5 the worker?

6 THE WITNESS: Mr. Brent, when he was there, during the
7 mornings.

8 THE COURT: Anyone else correct the workers?

9 THE WITNESS: Mr. Anthony, here present, also.

10 BY MR. BENSON:

11 Q. Sir, you worked in restaurants for many years, correct?

12 A. Yes, sir.

13 Q. And you are familiar with the role of a captain in a
14 restaurant, are you not?

15 A. Yes, sir.

16 Q. And the role of a captain in a restaurant is to direct the
17 service, correct?

18 A. The managers do that.

19 Q. So is it your testimony that captains are not supposed to
20 direct -- sorry.

21 That captains are not supposed to direct employees in
22 the service?

23 A. As captains? They are not given much authorization for
24 them to tell a worker, look, here -- in other words, excuse me,
25 so that you can understand me, for example, a waiter, when he

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Leon - Direct

1 makes a mistake, he cannot -- he does not go and see the
2 captains, because the captains say: There is the manager.
3 That is for you to go and see him. Go see the manager.

4 THE COURT: So who are the captains at the
5 restaurants?

6 THE WITNESS: A young man, a guy by the name Alex;
7 there was another one and his name is, was Julio; and some
8 others have done -- been through those positions, but I do not
9 remember their names. Recently after 2013 it was
10 Mr. Christopher.

11 BY MR. BENSON:

12 Q. So is it your testimony that Brent Drill was not a captain?

13 A. No, Mr. Brent was a manager.

14 Q. Look at paragraph 59 of your declaration, on page 9. It
15 says, and I quote, "Brent Drill was a manager at Fresco and
16 also acted as a captain."

17 Is that correct?

18 A. He started to work at Fresco Restaurant as a waiter. From
19 being a waiter, then he was -- he became a captain. And from
20 being a captain, he became a manager.

21 THE COURT: When is it that he became a manager?

22 THE WITNESS: I cannot remember exactly the years, but
23 he, for example, on Mondays that Mr. Attilo had a day off,
24 Mr. Brent was the one who would cover his shift.

25 THE COURT: But is it recent that Mr. Drill became a

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Leon - Direct

1 manager or are we talking about years ago that he became a
2 manager?

3 THE WITNESS: No, no. He was a captain, and from
4 captain he became a manager.

5 THE COURT: But did that happen recently or did that
6 happen a number of years ago?

7 THE WITNESS: No, not many years, just a few years.

8 Q. January 1 of 2013, correct?

9 A. That was the paper that the gentleman gave us, to us when
10 allegedly supposedly there it said that he was a manager, but
11 as a manager he had already -- he had already -- he already was
12 in charge of -- well, to tell the waiters what they had to do.

13 THE COURT: Sir, what paper are you talking about?

14 THE WITNESS: Yes, that Mr. Brent was a manager.

15 THE COURT: Who gave you this paper?

16 THE WITNESS: It was given to us by Mr. Anthony, but
17 just recently, about two years ago, I believe.

18 BY MR. BENSON:

19 Q. Paragraph 57 of your declaration reads, and I quote, "Brent
20 Drill received tips when he served as a captain until January
21 2013."

22 Does that refresh your recollection that it was
23 January 2013?

24 A. As a manager you might want to say.

25 THE COURT: I want to go back to this piece of paper

Ecc2sal5

Leon - Direct

1 that you were talking about. You said you were given a paper
2 that Mr. Drill was a manager and then you said he already was
3 in charge. What do you mean by that?

4 THE WITNESS: He, for example, Mr. Brent, would give
5 the specials to the waiters during the mornings. When one was
6 waiting on call to know whether one was going to be to work or
7 not, the host, James, in other words, his name is James, we
8 always had to ask Mr. Brent whether we were needed to go and
9 work or not.

10 THE COURT: But what do you mean he already was in
11 charge?

12 THE WITNESS: Yes, he -- yes, in other words, with
13 responsibilities as a manager. He would tell us whether we
14 could work or not.

15 THE COURT: And when was he exercising those
16 responsibilities?

17 THE WITNESS: From -- I do not remember the years
18 before, but perhaps -- I do not remember, but perhaps from
19 since 2011, I do not remember exactly the year.

20 THE COURT: So you are saying it was 2011 that he was
21 promoted from captain to manager?

22 THE WITNESS: I would think so, yes.

23 MR. BENSON: May I inquire, your Honor?

24 THE COURT: You may.

25 BY MR. BENSON:

Ecc2sal5

Leon - Direct

1 Q. You testified, sir, that you believed that Mr. Drill was a
2 manager because he would tell James who was necessary? Is that
3 your testimony?

4 A. Yes, he would give the authorization for whether they would
5 need the person who was on call on the schedule.

6 Q. Well, if you weren't there, how do you know that it was
7 Mr. Drill and not Mr. Scotto who told James whether on-call
8 people were needed or not?

9 A. Because during the waiters' meeting -- the waiters' meeting
10 is done in the back part, near where you go into the kitchen,
11 and Mr. Hoster, when we would call him from the station, where
12 the gentleman performs his job, where we could hear him clearly
13 on the phone says is he going to be called to come here, and he
14 would say no.

15 THE COURT: You are saying you would hear the voice of
16 Mr. Drill?

17 THE WITNESS: Yes.

18 Q. Isn't it true that only Mr. Scotto and no one else
19 determines the staffing that's necessary for every shift at
20 Fresco Restaurant?

21 A. From our end, no. Perhaps the gentleman reviews the
22 schedule. I do not know. Perhaps if he has enough busboys or
23 whether he has a private party or he needs more, I do not know.
24 But for taking decisions, we could see that it was Mr. Brent
25 who would also take decisions.

Ecc2sal5

Leon - Direct

1 Q. I am speaking specifically with respect to the number of
2 staff that is necessary on any particular shift. Isn't it true
3 that Anthony Scotto was the only individual who made those
4 decisions?

5 A. Mr. Anthony, when he arrives in the morning, perhaps he
6 goes to the liquor room or perhaps he remains in his office.
7 We do not know exactly very well. Brent is the one who gives
8 the specials to the waiters.

9 Q. Sir, Brent Drill didn't even arrive at the restaurant until
10 well after those decisions needed to be made, isn't that
11 correct?

12 A. No, sir. Mr. Brent would arrive between 10 in the morning
13 and 11 in the morning.

14 Q. What time did Anthony Scotto arrive at?

15 A. We would see him come in -- well, perhaps -- perhaps we
16 were not looking at a clock or a watch, but shortly before 10,
17 sometimes even perhaps before that sometimes. When we would
18 arrive to start working, the gentleman was already present
19 there.

20 Q. And when would you come in, sir?

21 A. 10 a.m.

22 Q. And you just happened to be there when the discussions
23 regarding what staff is necessary were being made or were being
24 had?

25 A. Possibly.

Ecc2sal5

Leon - Direct

1 Q. Other than saying that you believe that Mr. Drill made some
2 decisions in terms of what staff would be necessary and that he
3 spoke and told the specials to the waiters, there are no other
4 things that you can think of, correct, to establish that
5 Mr. Drill was a manager.

6 A. Because they do not allow a waiter to give the specials.
7 It was always given by him in the morning or by Mr. Attilo
8 during the evening.

9 Q. And both of those gentlemen spent their entire shift on the
10 service floor during a particular service, correct?

11 A. Yes, when -- in other words, at their own shifts, yes.

12 Q. And both of those gentlemen greet guests and take orders
13 and explain the specials and sell wine and deal with customer
14 complaints and do everything in connection with the service to
15 ensure that the customers at Fresco Restaurant have a great
16 experience. Isn't that correct?

17 A. Yes, that is correct at all restaurants. There are people
18 who greet and deal with the questions and everything is all
19 right when they are eating, for example, then a manager can
20 come close to that table or the waiter and then they ask them
21 whether everything is all right when they are eating their
22 meals.

23 Q. And that is what a good captain does, correct, sir?

24 A. Yes.

25 Q. Now, going back to Gelacio, why do you believe that

Ecc2sal5

Leon - Direct

1 Mr. Drill was the one who fired Gelacio?

2 A. On that occasion, Mr. Gelacio was working as a stocker. I
3 cannot remember which station I was in exactly, but I was
4 taking dishes over to the kitchen when I heard some yelling.
5 Someone was yelling. But my fellow worker Gelacio was coming
6 down the stairs. Mr. Brent was at the stocker's station, and
7 he told him to leave, that he was not needed anymore because he
8 said a foul word. But I do not know whether I can repeat it
9 here.

10 THE COURT: You can quote him directly.

11 A. He said that he looked -- or he was like a pig because this
12 guy Gelacio would sweat too much, perspire too much.

13 Q. Isn't it true that Gelacio showed up an hour late for his
14 shift that night?

15 A. No, sir. Mr. Gelacio worked as a stocker in that location.

16 Q. Do you testify from personal knowledge that he arrived at
17 work on time that day?

18 A. Me, me, I was there. When I came in with the dishes, they
19 are already arguing.

20 Q. Isn't it true that Mr. Gelacio showed up late and
21 intoxicated on that occasion, drunk?

22 A. I do not know whether he was drunk or not. When I saw him,
23 he was already coming down the stairs in order to go and pick
24 up his things from the lockers. The lockers, we have them at
25 the lower part in the basement, or I don't know what you call

Ecc2sal5

Leon - Direct

1 it. So this gentleman had gone over to pick up his things in
2 order to leave.

3 Q. So the first time you saw him on the day in question was
4 after the incident had already happened when he was walking
5 down the stairs to pick up his things to leave? Is that your
6 testimony?

7 A. All I only -- I just saw him when they were arguing.
8 Sometimes one does not pay attention to the persons, at what
9 time did they come in, to see what time they came in.

10 Q. I thought you said that the first time you saw him was when
11 he was walking down the stairs to retrieve his things. Perhaps
12 I misunderstood.

13 A. The gentleman was already working with a busboy uniform.

14 Q. Sir, isn't it true that on that occasion Gelacio threw
15 silverware at Mr. Drill?

16 A. I did not see that part.

17 Q. So you weren't observing the entire incident, is that
18 correct?

19 A. I will repeat to you again, sir, I was coming in with
20 plates, and I was bringing dirty dishes, and I was bringing
21 them over to the dishwasher's station. The dishwasher has a
22 big piece, a flat piece of -- like a large plate or a large
23 slate where all the dirty dishes are placed there on top -- a
24 counter where all the dirty dishes are placed there.

25 Q. So is it your testimony you did not witness the entire

Ecc2sal5

Leon - Direct

1 incident?

2 A. I did not see everything, but I did see when he told him
3 for him to go back because he perspired too much.

4 Q. And isn't it true that after this incident Gelacio met with
5 Mr. Scotto?

6 A. I do not know so because I never saw him or that.

7 Q. And that he told Mr. Scotto that he was drinking?

8 A. Is that we do not look or watch -- see the persons when
9 they arrive.

10 Q. And that it was Mr. Scotto who sent him home and terminated
11 his employment in connection with that incident after he
12 admitted drinking?

13 MR. ANDROPHY: Objection. The witness testified he
14 doesn't know if Gelacio admitted to drinking.

15 THE COURT: Overruled. You may answer.

16 A. Sir, I did not see Mr. Gelacio arrive. I did see the
17 argument between Mr. Brent only, and I did not see whether
18 Gelacio spoke with Mr. Anthony.

19 MR. BENSON: Thank you. I have no further questions.

20 THE COURT: Redirect.

21 REDIRECT EXAMINATION

22 BY MR. ANDROPHY:

23 Q. Mr. Leon, do you recall you were asked a few minutes ago
24 about when you were given the document that said Mr. Drill was
25 manager?

Ecc2sal5

Leon - Redirect

1 A. I do not remember the year, but they did give us a paper.

2 MR. ANDROPHY: May I approach to give an exhibit?

3 Exhibit 49.

4 Q. Do you recognize this document, Exhibit 49, that was put in
5 front of you?

6 THE COURT: Is it Plaintiffs' 49?

7 MR. ANDROPHY: Yes, Plaintiffs' Exhibit 49.

8 (Pause)

9 THE COURT: Is there a question?

10 MR. ANDROPHY: Sorry. I was waiting for your Honor to
11 look at the exhibit. I will proceed.

12 BY MR. ANDROPHY:

13 Q. Do you recognize this document, Exhibit 49?

14 A. Yes.

15 Q. And do you recognize the signature on the document?

16 A. Yes.

17 Q. Do you know -- do you understand what this document says or
18 do you need it translated to understand what it means?

19 A. I require a translation because I do not understand it
20 well.

21 MR. ANDROPHY: I would just like to ask the
22 translator -- the interpreter to just translate the title and
23 the first paragraph to the witness.

24 (Pause)

25 THE INTERPRETER: I read it to him in Spanish

Ecc2sal5

Leon - Redirect

1 according to your instructions, counsel.

2 MR. ANDROPHY: Thank you.

3 BY MR. ANDROPHY:

4 Q. Does the interpreter's translation, does that assist in you
5 understanding what this document is?

6 A. Sincerely, I did not understand it very well.

7 Q. Do you see the date on the document?

8 A. Yes.

9 Q. Does this document refresh your recollection of when you
10 received the document that was the managers of Fresco?

11 THE INTERPRETER: What document did you say?

12 MR. BENSON: Objection, your Honor. He is leading the
13 witness.

14 THE COURT: Sustained.

15 Q. Do you recall you were asked previously what you did when
16 you were assigned as the coffee person?

17 A. Yes.

18 Q. Did you always both pour and deliver coffee when you served
19 as coffee person?

20 A. Yes.

21 MR. ANDROPHY: I have no further questions for this
22 witness.

23 MR. BENSON: Nothing further, your Honor.

24 THE COURT: Does that complete the testimony of all
25 the plaintiffs?

Ecc2sal5

Leon - Redirect

1 MR. ANDROPHY: Yes, that completes the testimony of
2 the plaintiffs. We would reserve the right to recall them for
3 rebuttal if that is necessary after the defendants' witnesses
4 and there are also two individuals who we have been attempting
5 to serve with subpoenas, and so we may put them on as well.
6 Right now this is the testimony of all the plaintiffs.

7 THE COURT: So you are not resting.

8 MR. ANDROPHY: Well, we reserve the right to call
9 those two individuals who we are attempting to serve with
10 subpoenas, so we are not resting.

11 THE COURT: Sir, you may step down.

12 (Witness excused)

13 THE COURT: So even though plaintiffs have not rested,
14 we are now going to go to the defense case.

15 MR. BENSON: We call Anthony Scotto, your Honor.

16 THE INTERPRETER: Is the interpreter now excused, your
17 Honor.

18 THE COURT: I assume you do not need the interpreter
19 any further.

20 MR. BENSON: We do not.

21 ANTHONY SCOTTO,

22 called as a witness by the defendants,

23 having been duly sworn, testified as follows:

24 THE COURT: You may inquire.

25 DIRECT EXAMINATION

Ecc2sal5

A. Scotto - Direct

1 BY MR. BENSON:

2 Q. Mr. Scotto, I would like to show you what have been marked
3 for identification as Defendants' Exhibit K and L.

4 MR. BENSON: Your Honor, L is a supplemental trial
5 declaration that we drew up last night. This particular copy
6 isn't signed, but it is identical to the one that Mr. Scotto
7 has in front of him.

8 Q. Mr. Scotto, first, with respect to Exhibit K, can you
9 identify that document?

10 A. It is an affidavit I signed.

11 Q. Does that represent your truthful and accurate testimony in
12 this matter?

13 A. Yes, sir.

14 MR. BENSON: Move it into evidence, your Honor.

15 THE COURT: Any objection?

16 MR. ANDROPHY: No objection.

17 THE COURT: It is admitted.

18 (Defendant's Exhibit K received in evidence)

19 MR. BENSON: In addition, I would like to move into
20 evidence Exhibits A through J, which are exhibits, move those
21 into evidence as well.

22 THE COURT: Any objection?

23 MR. ANDROPHY: If I may just have one moment.

24 Sorry. I'm not entirely clear which exhibits
25 defendants are offering, if they are offering what they marked

Ecc2sal5

A. Scotto - Direct

1 as Defendants' Exhibits A through J or if it is the exhibits
2 that are, I guess, annexed to the affidavit.

3 MR. BENSON: Those annexed to the affidavit.

4 MR. ANDROPHY: 1A through 1J?

5 MR. BENSON: That's correct.

6 MR. ANDROPHY: No objection.

7 THE COURT: They are admitted.

8 (Defendant's Exhibits 1A through 1J received in
9 evidence)

10 BY MR. BENSON:

11 Q. Mr. Scotto, do you recognize what's been marked for
12 identification as Defendant's Exhibit L?

13 A. Yes, sir.

14 Q. Is that -- what is that?

15 A. Supplemental declaration, sir.

16 Q. Does that represent your truthful and accurate testimony?

17 A. Yes, sir.

18 MR. BENSON: Move it into evidence, your Honor.

19 THE COURT: Any objection?

20 MR. ANDROPHY: No objection.

21 THE COURT: It is admitted.

22 (Defendant's Exhibit L received in evidence)

23 MR. BENSON: We have nothing further at this time,
24 your Honor.

25 THE COURT: Cross-examination.

Ecc2sal5

A. Scotto - Direct

1 CROSS EXAMINATION

2 BY MR. ANDROPHY:

3 Q. Good afternoon, Mr. Scotto.

4 A. Sir.

5 Q. Is it correct that you have been present in this courtroom
6 for all of the testimony so far in this trial?

7 A. Yes, sir.

8 Q. What is your position at Fresco by Scotto?

9 A. Owner and manager, sir.

10 Q. Do you have any official title?

11 A. I would guess you would call me a general manager, sir.

12 Q. Does Starjem Restaurant Corp. own and operate Fresco by
13 Scotto?

14 A. Yes, sir.

15 Q. Are you a shareholder of that company?

16 A. Yes, sir.

17 THE COURT: There are other shareholders?

18 THE WITNESS: Yes, ma'am.

19 THE COURT: Who are they.

20 THE WITNESS: My mother, my sister, and -- sorry, my
21 two sisters. I apologize.

22 Q. Those two sisters being Elena and Rosanna?

23 A. Yes, sir.

24 Q. Is your mother the majority shareholder?

25 A. Yes, sir. She put up all the money.

Ecc2sal5

A. Scotto - Cross

1 Q. Do you know what her percentage share ownership is?

2 A. It is in the 50 percent range, sir.

3 Q. Do you have an official title as an officer of the
4 corporation?

5 A. I believe it is secretary treasurer, sir.

6 Q. Does anyone else have any official titles in the
7 corporation?

8 A. Yes, sir.

9 Q. And who has additional titles?

10 A. I think the only remaining, then, would be my mom as
11 president and my sister Elena as vice president.

12 Q. You testified at paragraph 4 of your affidavit that you are
13 typically at Fresco between 8:30 a.m. and 10 p.m. and on
14 Saturdays it varies, but usually you are there between 2 p.m.
15 and 9 p.m. Is that correct?

16 A. Saturdays also in the morning, at 7:00 in the morning,
17 doing maintenance with some people, leaving and coming back by
18 2, 2:30, yes, sir, on Saturday.

19 Q. Do you recall that you gave a deposition in this case?

20 A. Yes, sir.

21 Q. And you took an oath to answer questions truthfully,
22 correct?

23 A. Yes, sir.

24 Q. And you were asked questions and you gave answers, correct?

25 A. Yes, sir.

Ecc2sal5

A. Scotto - Cross

1 MR. ANDROPHY: If I may provide the witness and also
2 the court with Mr. Scotto's deposition transcript.

3 (Pause)

4 MR. ANDROPHY: Your Honor, I have a binder.

5 THE COURT: Thank you.

6 BY MR. ANDROPHY:

7 Q. And that deposition took place January 9, 2014, correct?

8 A. Yes, sir.

9 MR. ANDROPHY: And for the court, that is at tab 3 in
10 the binder and for the witness as well.

11 Q. I refer the witness to page 22 of his deposition.

12 A. Yes, sir.

13 Q. Did you give the following testimony beginning at line
14 16: "Usual situation, I am there from 8:30 in the morning
15 until 9:30 at night. By 9 to 9:30 at night you can shoot a
16 canon through my restaurant."

17 Did you give that testimony?

18 A. Yes, sir.

19 (Continued on next page)

20

21

22

23

24

25

ECC5sal6

A. Scotto - cross

1 BY MR. ANDROPHY:

2 Q. Isn't it correct you're typically only at the restaurant
3 until 9:30 p.m.?

4 A. That's being on the floor, sir. I do some work downstairs
5 in the office.

6 Q. Turn to page 37 of your deposition. Directing your
7 attention to line 11 were you asked the following question and
8 did you give the following answer:

9 "Q What time do you typically arrive on Saturday?

10 "A 5:00."

11 A. Yes, sir. I see that.

12 Q. So, isn't it correct that typically on Saturday you arrive
13 around 5:00 p.m.?

14 A. Again, there is a time when arriving on the floor and
15 arriving in the office. As I said to you, I'm there early in
16 the morning on Saturdays also doing some work.

17 Q. Is it true that you are often not at the restaurant on
18 Saturdays during the summer?

19 A. I would like to take off on Saturdays during the summer,
20 yes.

21 Q. So you are often away and away from New York City and in
22 the Hamptons on Saturdays in the summer?

23 A. We do catering in the Hamptons on the weekends in the
24 summer. We would like to be busy there in the summer also,
25 yes.

ECC5sal6

A. Scotto - cross

1 Q. Is it correct that Marion Scotto, your mother, is sometimes
2 involved in determining whether the restaurant will hire
3 additional employees?

4 A. Never.

5 Q. I direct your attention to page 50 of your deposition.

6 A. Yes.

7 Q. At line 7 were you asked the following questions and did
8 you give the fog answers:

9 "Q How does Fresco by Scotto determine that it needs -- that
10 it may need to hire additional employees?

11 "A I make the determination.

12 "Q Is anyone else involved in that?

13 "A Probably. I mean, it could be anybody. It could be my
14 mother, it could be James, it could be Attilio, it could be
15 Brent. It could be anybody."

16 Did you give that answer?

17 A. Yes, sir.

18 Q. And was that answer correct and truthful?

19 A. Absolutely, sir.

20 Q. So, it is correct that your mother could be involved in the
21 decision to hire additional employees at Fresco?

22 A. The only thing my mother was in charge of for Fresco
23 Restaurant, sir, was for private parties and me interviewing
24 hosts and hostesses that were involved with the front desk.
25 So, if it had to do with a host and hostess, I would run it by

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A. Scotto - cross

1 her because she was siting at that desk, so that she was sure
2 that she liked them prior to me hiring them. I did the
3 interviewing, sir.

4 Q. So, she would have some involvement in the hiring of a host
5 or hostess?

6 A. James would also be involved in that hire.

7 Q. She might be present at an interview for a host or a
8 hostess, is that correct?

9 A. My mother, in 22 years, has never been involved in any type
10 of interview that I have been interviewing a potential person
11 being hired at the restaurant.

12 Q. Can you turn to page 54 of your deposition? I direct your
13 attention to line 4. Were you asked the following questions
14 and did you give the following answers:

15 "Q Was anyone else ever present at the interviews?

16 "A Possibly.

17 "Q Who might be present at an interview?

18 "A My mother, James, Attilio, Brent, Peter, Marco."

19 Were those answers correct and truthful?

20 A. Yes, sir.

21 Q. So, your mother had been present at some interviews?

22 A. Possibly I was taking things a little bit more
23 lackadaisical on this conversation with you, sir.

24 Q. Referring to the conversation at the deposition?

25 A. Yes, sir. I think I was -- because I also mentioned people

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A. Scotto - cross

1 that would never be in an interview also, sir. I think I was
2 just being a little silly with you, sir.

3 Q. Okay.

4 And you were under oath at that time, correct?

5 A. Still possibly being silly, sir.

6 Q. So, of these individuals you listed at lines 9 and 10 on
7 page 54, which ones might be present at an interview actually
8 and which ones were you just being silly?

9 A. It is all depending on the interview, sir.

10 Q. So, has James ever been present at an interview?

11 A. He has been brought into interviews when I am interviewing
12 potential new hires.

13 Q. Has Attilio been present in interviews?

14 A. I would tell you no.

15 Q. Has Brent been present in interviews?

16 A. I think Brent, along with James, you know, maybe they have
17 walked into a situation where I have asked them questions
18 during an interview to maybe one of the potential new hires was
19 asking a question that I couldn't answer maybe about what
20 people were making and stuff like that. So, they knew what was
21 going on.

22 Q. Has Peter been present in interviews?

23 A. I would probably tell you not.

24 Q. And has Marco?

25 A. Marco maybe had stopped in when I had asked him to, called

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A. Scotto - cross

1 him in. For that type of question I would ask for Brent or
2 someone else in that situation.

3 Q. Does Marion Scotto ever prepare documents to give to
4 employees?

5 A. I don't see why she would have, sir.

6 Q. I am giving you a document that's been marked and admitted
7 as Plaintiff's Exhibit 34. Do you recall that you were shown
8 this document at your deposition?

9 A. Sir, respectfully, I can't even read this document.

10 Q. I apologize. It is a somewhat poor quality copy.

11 If you could turn to page 143 of your deposition?

12 A. Yes, sir.

13 Q. And, directing your attention to line 23, do you recall the
14 following questions and answers:

15 "Q I am giving you a copy of a document that was previously
16 marked Plaintiff's Exhibit 14."

17 Skipping ahead on page 144 to line 8:

18 "Q Does this document show that Mr. Amazquita had an agreement
19 with Fresco by Scotto about employee uniforms and cleaning
20 reimbursement?

21 "A I have no idea what this letter is. Absolutely no idea
22 what this letter is. None.

23 "Q Do you recognize the signature next to the name Manager?

24 "A I think the manager is Attilio Vosilla.

25 "Q Have you seen this document before?

ECC5sal6

A. Scotto - cross

1 "A Never.

2 "Q Have you seen an unsigned copy version of this document?

3 "A Never."

4 Were you asked those questions and did you give those
5 answers at your deposition?

6 A. I see that here, sir.

7 Q. And, does this refresh your recollection that you were
8 shown a document marked at trial as Plaintiff's Exhibit 34 and
9 asked those questions about that document?

10 MR. BENSON: Objection, your Honor. Weren't these
11 questions about Marion Scotto?

12 MR. ANDROPHY: I am getting there, not that I need
13 to --

14 THE COURT: I don't know. I don't know. Are you
15 asserting that they are?

16 MR. BENSON: I believe that's --

17 MR. ANDROPHY: I'm getting there.

18 THE COURT: Okay.

19 THE WITNESS: Sir? I'm sorry.

20 BY MR. ANDROPHY:

21 Q. Do you recall that those questions and answers referred to
22 the document that is marked here as Plaintiff's Exhibit 34?

23 A. Respectfully, I can't read this document that you have got
24 in front of me, sir. I apologize.

25 Q. Okay. Turn to page 145 of your deposition, were you asked

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A. Scotto - cross

1 the following questions and did you give the following answers:

2 "Q If Mr. Vosilla prepared this and gave it to the employee,
3 then he must have done that without your permission or
4 consultation. Is that correct?"

5 Then after the objection, answer starting on page 146,
6 line 3:

7 "A Maybe my mother gave this to him. I don't know. I don't
8 know. The only thing I can figure this is and I don't know
9 what it is, I have never seen it before."

10 So, do you recall you testified that you thought maybe
11 your mother gave that document to Mr. Vosilla?

12 A. Again, I was just probably talking out of school with you
13 again, sir.

14 Q. You didn't say that because your mother would sometimes
15 provide documents to be given to employees?

16 A. Again, I -- I can't recall the reason why my mother would
17 be giving employees documents.

18 Q. And, again, that's testimony that you gave under oath,
19 correct?

20 A. Absolutely, sir.

21 Q. Does Marion Scotto help make sure that food is served
22 properly at Fresco?

23 A. If it passes her in the bar area, yes.

24 Q. And so, she's involved in making sure that service
25 employees are properly serving food on the restaurant floor?

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A. Scotto - cross

1 A. Will she come to her son and say, *Anthony, the food that*
2 *was going out to table 202 didn't look right and why doesn't it*
3 *look right?* Yes, there are times that she has done that, sir.

4 Q. If you could turn, in the binder before you, to Exhibit 74?

5 A. Yes, sir.

6 Q. Do you recognize that document?

7 A. I do, sir.

8 Q. What is it?

9 A. An employee handbook, sir.

10 Q. And was Marion Scotto involved in creating the employee
11 handbook?

12 A. I don't think so.

13 MR. ANDROPHY: We ask that Plaintiff's Exhibit 74 be
14 admitted into evidence.

15 THE COURT: Any objection?

16 MR. BENSON: No objection.

17 THE COURT: It is admitted.

18 (Plaintiff's Exhibit 74 received in evidence)

19 BY MR. ANDROPHY:

20 Q. If you can turn to your deposition at page 159?

21 A. Yes, sir.

22 Q. And beginning at line 2 were you asked the following
23 questions and did you give the following answers? Starting the
24 last two words of that line:

25 "Q Do you recognize this document?

ECC5sal6

A. Scotto - cross

1 "A I see it is a Fresco employee document. Yes."

2 And then moving down to line 17:

3 "Q So, why is Brent Drill identified as a restaurant manager?

4 "A Because I'm sure when Attilio and Brent put some of this
5 together and my mother and my father and my aunts and my
6 uncles, they all decided that everybody was going to be
7 categorized together and didn't -- who knows why."

8 Did you give that answer under oath at your
9 deposition?

10 A. I now realize why Mr. Benson, when he told me to stop
11 kidding around with you about some of these things, why it is
12 coming back to haunt me.

13 Q. So, was this another example of just being silly or talking
14 out of school at your deposition?

15 A. Yes, sir.

16 THE COURT: Are you being silly now?

17 THE WITNESS: No, ma'am.

18 BY MR. ANDROPHY:

19 Q. Isn't it correct that Marion Scotto also helps deliver food
20 to tables?

21 A. I've never seen my mother deliver food to tables, sir.

22 Q. If you can turn to page 48 of your deposition?

23 A. Page 48?

24 Q. Page 48. At line 23 were you asked the following questions
25 and did you give the following answers.

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A. Scotto - cross

1 "Q So, how is it that food gets out in 45 minutes?

2 "A Coffee men, stocker, me, Attilio, Brent, my mother, sous
3 chefs, waiters, James. Do you want me to keep going?"

4 Did you give that answer?

5 A. I did, sir.

6 Q. And is it true that your mother sometimes helps see that
7 food gets out in 45 minutes?

8 A. I guess my mother would grab a Fresco bread or something
9 when she is walking through the kitchen. I guess that could
10 happen. It hasn't happened recently, sir.

11 Q. Was this another example of being silly in an answer?

12 A. No. I think that's truthful.

13 Q. So, sometimes she might help bring food out?

14 A. I guess it is possible, sir.

15 Q. Your mother is at the restaurant every day usually? Is
16 that correct?

17 A. I would say yes.

18 Q. Isn't it also correct that she signs employees' paychecks?

19 A. If she's in the office because there needs to be two
20 signatures, sir.

21 Q. She's one of the people who might sign checks; is that
22 correct?

23 A. It is myself --

24 MR. BENSON: Asked and answered.

25 THE WITNESS: Sorry.

ECC5sal6

A. Scotto - cross

1 THE COURT: Sustained.

2 BY MR. ANDROPHY:

3 Q. Who else signs checks for employees' paychecks?

4 A. Myself, my sister Elaina, and my mother.

5 Q. Your mother is also in charge of booking parties at Fresco,
6 is that correct?

7 A. Yes, sir.

8 Q. And she would sign and send out contracts to clients; is
9 that correct?

10 A. Yes, sir.

11 Q. And those contracts identified any service charges or any
12 mandatory gratuities that the restaurant charges; is that
13 correct?

14 MR. BENSON: Objection as to the form of the question,
15 your Honor.

16 THE COURT: What is wrong with the form of the
17 question?

18 MR. BENSON: Compound question, your Honor.

19 THE COURT: All right. Break it down.

20 MR. BENSON: And I only say that because there is a
21 difference with respect to the two issues.

22 BY MR. ANDROPHY:

23 Q. Those contracts would identify any mandatory gratuities
24 that the restaurant charged for parties; is that correct?

25 A. Is there a document in front of me that I could look at

ECC5sal6

A. Scotto - cross

1 real quick?

2 MR. BENSON: Which exhibit?

3 MR. ANDROPHY: Tab 51 in defendant's binder. It is an
4 exhibit, it is in Marion Scotto's declaration.

5 THE COURT: Sorry. Would you repeat that, please?

6 MR. ANDROPHY: Yes. This document I gave to the
7 witness is at tab 51 in defendant's binders and it is Marion
8 Scotto affidavit Exhibit 3A.

9 MR. BENSON: Could the court reporter please read back
10 the question?

11 (Record read)

12 BY MR. ANDROPHY:

13 Q. Does looking at that document assist you in answering that
14 question?

15 MR. BENSON: Can I have a time frame, please?

16 MR. ANDROPHY: I'm not sure what.

17 THE COURT: Time frame for what?

18 MR. BENSON: When he is asking the question. The
19 first document, at least first one I am looking at, is dated
20 2013.

21 THE COURT: Isn't the question as to whether or not
22 the contract indicates there is going to be a gratuity? Was
23 that your question?

24 MR. ANDROPHY: I believe that that is the question of
25 what the gratuity is, is that identified in these contracts.

ECC5sal6

A. Scotto - cross

1 THE WITNESS: I believe it says a 17 percent food and
2 beverage cost -- a 17 percent food and beverage cost will be
3 added to your account as a gratuity distributed to the members
4 of the service staff, sir.

5 BY MR. ANDROPHY:

6 Q. Based on your recollection, has there ever been a time when
7 these contracts did not identify the mandatory gratuity that
8 would go -- that the restaurant would charge the clients for
9 the party?

10 MR. BENSON: Objection. Assumes facts not in
11 evidence.

12 THE COURT: Was there a time? You are asking was
13 there ever a time when the contract did not describe the
14 gratuity in the way that it is described in Exhibit 51?

15 MR. ANDROPHY: I'm asking if the contract -- I'm not
16 asking if the contract was ever different, I am only asking if,
17 right now, if the contract always described any mandatory
18 gratuity.

19 THE COURT: Are you saying over the course of their
20 business did all of their contracts describe the gratuity?

21 MR. ANDROPHY: Yes. Yes, your Honor.

22 THE WITNESS: I couldn't remember right now, sir. I'm
23 sorry.

24 BY MR. ANDROPHY:

25 Q. Is it true that Marion Scotto is listed with the New York

ECC5sal6

A. Scotto - cross

1 Department of State as the Chief Executive Officer of Starjem
2 Restaurant Corp?

3 A. I don't know.

4 Q. Is it true that, until recently, Fresco by Scotto's website
5 described Mrs. Scotto as follows: Known affectionately as 'the
6 boss 'Marion runs front of the house duties in the restaurant.

7 Do you know if that is correct?

8 A. That is a website which was just corrected, I guess, about
9 nearly a month ago, was nearly 18 years old, and that boss
10 figure that you are discussing was something that was quoted
11 from the NBC today show, sir.

12 Q. So, that's how Marion Scotto was described on the website,
13 up until, approximately, a month ago, correct?

14 A. I think on-air personality she is the boss, sir.

15 Q. Do you call her The Boss?

16 A. As much as I can, sir.

17 Q. Do customers call her The Boss?

18 A. No. They actually call her Mom.

19 Q. Do employees, some employees call her The Boss?

20 A. No.

21 Q. What is your understanding of what term "front of the house
22 duties" means?

23 A. In regards to who, sir?

24 Q. Just your general understanding as someone who has been in
25 the restaurant business.

ECC5sal6

A. Scotto - cross

1 A. Okay. I have been in the restaurant business all of my
2 life. There are so many aspects to the front of the house it
3 would be difficult for me to generically say what every
4 category does. So, if you could just define it for me a little
5 bit?

6 Q. Do you understand that front of the house duties would
7 include everything with having to do with service in the
8 restaurant?

9 A. Absolutely.

10 Q. And the appearance of the restaurant?

11 A. So, ask the question before that again? I'm sorry. What
12 would the appearance have to do with the front of the house?

13 Q. I'm asking if the appearance of the restaurant, if that's a
14 part of what you would consider front of the house as opposed
15 to back of the house.

16 A. You are talking about maintenance of that?

17 Q. Just the appearance of the restaurant and the places where
18 customers sit; is that part of front of the house duties, in
19 your understanding?

20 A. A customer walks into Fresco Restaurant, they see the front
21 of the house; yes, sir, they do.

22 THE COURT: All right. We are going to stop here, it
23 is 3:30. We will continue on Tuesday morning at 9:00 a.m.

24 Mr. Benson, please make sure that you have witnesses
25 that will fill the entire day until 5:00 p.m.

ECC5sal6

A. Scotto - cross

1 MR. BENSON: It will not be a problem, your Honor.

2 THE COURT: Thank you. You may step down.

3 MR. BENSON: Have a nice weekend.

4 THE COURT: Have a nice weekend.

5 THE WITNESS: You too, ma'am.

6 (Adjourned to 9:00 a.m., December 16, 2014.)

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